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No._____

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IN THE

Supreme Court of the United States

October Term, 1980

JOHN R. LARSON, Commissioner of Securities, Minnesota Department of Commerce; WARREN SPANNAUS, Minnesota Attorney General; Individually and in their official capacities,

Appellants,

vs.

PAMELA VALENTE, LARRY BARBER, LARRY HEFT, KIMBERLY KORMAN, and HOLY SPIRIT ASSOCIATION FOR THE UNIFICATION OF WORLD CHRISTIANITY,

Appellees.

ON APPEAL FROM,
THE UNITED STATES COURT OF APPEALS FOR
THE EIGHTH CIRCUIT

JURISDICTIONAL STATEMENT

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QUESTIONS PRESENTED

1. Whether the court below erred in assuming that a statutory provision intentionally and impermissibly favored certain religious sects over others when there was no evidence of legislative intent supporting this conclusion and no evidence of favoritism resulting from the provision.

2. Whether a statute regulating charitable contributions which requires a religious organization to comply with registering and reporting requirements if it solicits more than half of its funds from the general public is an establishment of religion.

3. Whether the court below erred in expanding the "overbreadth doctrine" to an establishment clause challenge when there has not been a finding that appellees represent a religious organization.

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Appellees.

ON APPEAL FROM,
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JURISDICTIONAL STATEMENT

This is an appeal from the judgment of the United States Court of Appeals for the Eighth Circuit dated January 7, 1981, holding a provision of the Minnesota Charitable Solicitations

Act,[1] to be violative of the establishment clause of the First Amendment to the United States Constitution. That provision exempts from certain registering and reporting requirements those religious organizations receiving over 50% of their contributions from their membership or affiliated organizations. Appellants submit this statement to show that the Supreme Court of the United States has jurisdiction of the appeal and that substantial federal questions are presented.

OPINIONS BELOW

The opinion of the Eighth Circuit Court of Appeals is reported at 637 F.2d 562 (8th Cir. 1981). The text of this opinion is set forth in Appendix A, *infra*. The order of the District Court for the District of Minnesota granting summary judgment is not reported. That order incorporates by reference portions of the unreported order of the district court granting plaintiffs' motion for preliminary injunction. The texts of these orders are set forth in Appendices B1, and C1 respectively.[2]

JURISDICTION

This action was initiated by plaintiffs-appellees (hereinafter "plaintiffs") in the United States District Court for the District of Minnesota pursuant to 42 U.S.C. § 1983 (1980) for injunctive and declaratory relief seeking to declare the Minnesota Charitable Solicitations Act, Minn. Stat. §§ 309.50-309.61 (1980) unconstitutional as violative of the First and

[1] Minn. Stat. §§ 309.50-309.61 (1980).

[2] The orders of the district court adopted the reports and recommendations of the federal magistrate to whom the preliminary injunction and summary judgment motions were originally referred. The reports and recommendations are set forth in Appendices B2 and C2 respectively.

Fourteenth Amendments and to grant an injunction against its enforcement.

Plaintiffs moved for summary judgment and defendants-appellants (hereinafter "defendants") cross moved for partial summary judgment. On August 31, 1979, the district court granted in part and denied in part plaintiffs' and defendants' motions. Defendants appealed and plaintiffs cross appealed. On January 7, 1981, the United States Court of Appeals for the Eighth Circuit issued an opinion holding a single provision of the Act unconstitutional and modifying and limiting the decision of the district court. A Notice of Appeal to this Court was filed on March 23, 1981, with the Eighth Circuit Court of Appeals. The jurisdiction of this Court to review the decision of the court of appeals is conferred by 28 U.S.C. § 1254(2).

STATUTE INVOLVED

The full text of the Minnesota Charitable Solicitations Act (Minn. Stat. §§ 309.50-309.61) is set forth in Appendix F.

STATEMENT OF THE CASE

1. The Proceedings Below

This action was commenced on October 11, 1978, by Complaint filed in the United States District Court for the District of Minnesota. Plaintiffs in the action as originally filed, were four individuals claiming to be members of the Holy Spirit Association for the Unification of World Christianity (hereinafter "Unification Church"), an alleged religious organization. Plaintiffs sought declaratory and injunctive relief against the officials of the State of Minnesota charged with enforcement of Minnesota's Charitable Solicitations Act, Minn. Stat. §§ 309.50-309.61 (1980) (hereinafter "Act"). Plaintiffs' action challenged the Act in its entirety as it applied to all religious and charitable organizations. In addition, the provision of the Act exempting religious organizations receiving more than half of their contributions from their membership or affiliated organization from the Act's registering and reporting requirements was challenged as being invalid with respect to religious organizations. See Minn. Stat. § 309.515(1)(b) (hereinafter "exemption provision").[3] After the filing of plaintiffs' action

[3] The exemption provision in total is as follows:

Subdivision 1. Subject to the provisions of subdivisions 2 and 3, sections 309.52 and 309.53 shall not apply to any of the following:

(b) A religious society or organization which received more than half of the contributions it received in the accounting year last ended (1) from persons who are members of the organization; or (2) from a parent organization or affiliated organization; or (3) from a combination of the sources listed in clauses (1) and (2). A religious society or organization which solicits from its religious affiliates who are qualified under this subdivision and who are represented in a body or convention is exempt from the requirements of sections 309.52 and 309.53. The term "member" shall not include those persons who are granted a membership upon making a contribution as a result of a solicitation.

but before the plaintiffs' motion for preliminary injunction was heard, the State of Minnesota instituted an action in State district court barring the Unification Church from soliciting contributions until such time as the annual financial statements required by the Act were filed.

Depositions were taken from the four individual plaintiffs for the purposes of determining jurisdictional issues and the real party in interest. No other discovery has been taken by plaintiffs or defendants. By stipulation it was agreed that the Unification Church would be joined as plaintiff in the federal court case and that the state court action would be stayed pending the outcome of the federal court litigation.

On July 5, 1979, the district court, following a recommendation from the magistrate to whom the matter was referred, granted plaintiffs' motion for a preliminary injunction barring the statute's enforcement as to plaintiffs and denied the defendants' motion to dismiss.

On January 19, 1980, the district court, again following the recommendation of the magistrate, rendered summary judgment for plaintiffs. The court held that the Act was unconstitutional as applied to religious organizations, and that the Act's cease and desist provisions (§ 309.534) and criminal penalty provision (§ 309.581) were unconstitutional as applied to persons "claiming to be religious organizations or members thereof." The court also determined that the Act was constitutional as applied to non-religious organizations and declared the Act's revocation and suspension provision (§ 309.532) to be non-justiciable. Defendants were permanently enjoined from enforcing the Act against any organization found to be religious and from enforcing the cease and desist and criminal penalty provisions of the Act against any organization "claiming to be religious."

Defendants appealed the order of the district court to the Eighth Circuit Court of Appeals on all issues resolved against them except for the finding with respect to the cease and desist provision. Plaintiffs cross-appealed the district court's determination that the Act was facially constitutional with respect to non-religious charitable organizations, but did not appeal the finding of non-justiciability of the revocation and suspension provision. The appeal was heard by a three-judge panel of the Eighth Circuit Court of Appeals which rendered its decision on January 7, 1981.

The Circuit Court affirmed the decision of the district court only insofar as the district court found that the exemption provision was violative of the establishment clause. The court, in its relief, rewrote the provision to exempt all religious organizations. In reaching this decision, the court held plaintiffs had standing under the "overbreadth" doctrine to bring the establishment clause challenge, and that the exemption provision violated the first and second prongs of the establishment clause test as enunciated by this Court in *Lemon v. Kurtzman*, 403 U.S. 602, 612-13 (1971).[4] The Circuit Court overturned that portion of the district court decision which found that the Act as a whole was unconstitutional as applied to religious organizations, and dismissed plaintiffs' appeal regarding the constitutionality of the Act as applied to non-religious organizations leaving that matter open for further development. Finally, the Court remanded the injunction issued against the State for modification and also remanded the question of whether plaintiffs' organization was religious and thereby entitled to exemption under the Act.

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[4] The Lemon test provides that a statute must: a) have a secular purpose; b) have a primary effect that neither advances nor inhibits religion; and c) not foster excessive government entanglement with religion.

2. The Statutory Scheme

The Minnesota Charitable Solicitations Act (Minn. Stat. §§ 309.50-309.61 (1980)) is a comprehensive statutory scheme regulating the solicitation of charitable contributions from the general public. The Act's purposes are to protect the contributing public from fraudulent and deceptive practices and to promote informed public contributing by allowing the public to become aware of the manner in which various organizations expend the contributed monies. Under the Act, a charitable organization, unless exempted, must register with the State prior to soliciting and comply with certain reporting requirements. Minn. Stat. §§ 309.52 and 309.53. The Act also includes certain investigation, enforcement and administrative provisions applicable to all religious and charitable organizations, whether or not exempted from the registration and reporting requirements.

The Act has been in effect since 1961, but has not yet been construed by the Minnesota Supreme Court. In 1978, a number of substantive amendments to the Act were enacted, including the addition of the cease and desist provision (§ 532.534) and the limitation on charitable expenditures provision (§ 309.555). The exemption provision was also amended in 1978. That provision, which had applied to all religious organizations, was amended to exempt only those religious organizations receiving more than 50% of their contributions from their membership or affiliated organization. Minn. Laws 1978 c. 601 § 5.

There are six categorical exemptions within the Act which excuse compliance with the registration and reporting requirements. These exemptions are inapplicable if the organization

employs a professional fund raiser, § 309.515(2) or has its exemption revoked under § 309.515(3).

These six categories of exemptions are as follows:

a. Organizations which received less than $10,000 annually and employ no paid staff;

b. Religious organizations which raise more than half of their public contributions from their membership or from affiliated religious organizations;

c. Organizations subject to the supervision of the Minnesota college system or to national accrediting organizations;

d. Fraternal benevolent associations which raise 100 percent of their funds from their membership;

e. Charitable organizations soliciting contributions for specified individuals and which pass through 100 percent of the contributions raised; and

f. Private foundations limiting solicitation to fewer than 100 members of the public.

The Act makes no distinction between religious and nonreligious organizations or among religious organizations other than in the exemption provision here adjudged unconstitutional. A religious organization may, however, be exempt under one of the other five categorical exemptions.

THE QUESTIONS ARE SUBSTANTIAL

This case marks the first time since *Gillette v. United States*, 401 U.S. 437 (1971) that the issue of the constitutionality of a statutory exemption applicable to some but not all religious organizations has been before this Court. This case is the first since *McGowan v. Maryland*, 366 U.S. 420 (1968), to place in issue whether a plaintiff, in a religion clause challenge, may assert the rights of others not before the Court. The Circuit Court below, ruling contrary to *Gillette*, held the challenged exemption to be unconstitutional and, contrary to *McGowan*, held plaintiffs had standing to maintain this action.

Specifically, the Circuit Court concluded below that the exemption provision violated both the secular purpose and primary effect prongs of the establishment clause test. The court reached this decision, however, without a factual or legislative record, relying instead on only its own speculations and unsupported assumptions. In so ruling, the court violated settled rules of procedure and constitutional presumption. More importantly, the court's assumptions were incorrect and misstated the actual purpose and effect of the challenged exemption. The court's decision is thus a particularly grievous and unjust federal court intrusion into state legislative action. Moreover, it is a direct challenge to the integrity and the motivation of the legislature of the State of Minnesota and leaves in doubt the ability of any state legislature to regulate effectively in the area of public solicitation by religious organizations. It should be reversed.

1. THE CIRCUIT COURT'S UNWARRANTED ASSUMPTIONS WITH RESPECT TO THE EXEMPTION PROVISION ARE ERRONEOUS, NOT SUPPORTED BY THE RECORD, AND PROCEDURALLY AND CONSTITUTIONALLY IMPROPER.

In concluding the exemption provision to be unconstitutional, the Circuit Court made numerous assumptions regarding the exemption provision. These assumptions fall into two general categories; assumptions regarding the legislative intent underlying the statute and assumptions regarding the factual effect of the statute. The Court, in creating these assumptions, however, reversed the general rules of presumption applicable to constitutional and summary judgment analysis and thereby committed error. The court's assumptions are also unjust. Had the assumed matters been investigated, documented or remanded by the court for further development, a result contrary to that of the court's would have been reached.

a. Assumptions Regarding Legislative Motivation

This Court has stated: "Inquiries into congressional motives or purposes are a hazardous matter." *United States v. O'Brien*, 391 U.S. 367, 383 (1968); *Flemming v. Nestor*, 363 U.S. 603, 617 (1960).

Ignoring such cautionary words from this Court, however, the Circuit Court speculated as to legislative purpose in this case and incorrectly concluded that the exemption provision had been enacted by the Minnesota legislature pursuant to discriminatory motive, 637 F.2d at 566, 567 and 568. This holding was wholly unwarranted. Prior to the Circuit Court's ruling, legislative motivation and history had not been an issue in the

case. The district court had made no findings with respect to legislative purpose. No references to the legislative history were cited by either plaintiffs or defendants in their briefs to the Circuit Court and the Circuit Court's opinion cites no legislative history supporting its conclusions. The plaintiffs themselves did not even argue that the exemption provision violated the secular purpose prong of the establishment clause test and, in fact, expressly maintained that the court need not reach this issue. Brief of appellees/cross appellants p. 21-22 FN 11 (to Eighth Circuit).

Despite this total lack of foundation, the Circuit Court concluded that the exemption "smacks of 'religious gerrymandering', an apparently intentional favoritism for [the exempted] religious organizations." 637 F.2d 566. It also concluded, similarly based on no more than its own speculations, that "it seems much more likely that at some stage of the legislative process, special solicitude for particular religious organizations affected the choice of statutory language." 637 F.2d at 568. Indeed, the Circuit Court determined the exemption provision to be "constitutionally invidious" 637 F.2d at 568. Such perjorative findings regarding the efforts of the Minnesota Legislature extend far beyond the analysis this Court has taken even when unconstitutional motivation has been documented. *Palmer v. Thompson*, 403 U.S. 217 (1971); *United States v. O'Brien, supra.*

Inquiries into legislative purpose may be made under the secular purpose prong of the establishment clause test. However, a strong presumption of constitutional motivation remains even in establishment clause analysis. *See, e.g., Committee For Public Education v. Nyquist*, 413 U.S. 756, 773 (1973); *Lemon v. Kurtzman, supra*; *Gillette v. United States*, 401 U.S. 437 (1971). The cases which have found improper

secular purpose are not to the contrary, *Stone v. Graham*, —— U.S. ——, 101 S.Ct. 192 (1980); *Epperson v. Arkansas*, 393 U.S. 97 (1968). Both *Stone* and *Epperson* confined their analysis to whether a requirement that certain religious tenets be taught or exhibited in public schools constituted an establishment of religion.[5] Intentional discrimination among religious organizations was not found by this Court. The Circuit Court's decision, thus, steps well beyond the parameters of proper application of constitutional analysis. It turns the presumption of the legality of legislative motives on its head, *e.g. State of Minnesota v. Clover Leaf Creamery*, —— U.S. ——, 101 S.Ct. 715 n. 7 (1981).

The court's conclusions regarding legislative motivation are also unjust and incorrect. There is no support for the court's conclusions regarding legislative motivation in the legislative history.

Review of the Minnesota House and Senate committee and floor debates indicates the exemption provision received little attention.[6] The legislature was far more concerned with the cease and desist (§ 309.534) and the limitation on charitable expenditures (§ 309.555) provisions of the Act. Tape of Senate Judiciary Committee (March 18, 1978); tape of Senate Judiciary Sub-Committee (March 7, 1981); tapes of the House Commerce and Economic Development Committee (September 15, 1977, December 6, 1977 and January 19, 1978); and House Floor Session Tapes, March 11, 1978 and March 20, 1978.

The legislative history indicates only that the exemption provision was drafted primarily in response to the Maryland

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[5] Stone and Epperson reflect the heightened review applied under the establishment clause to laws affecting elementary and secondary education. Such review is inapplicable in the context of this case. Compare Lemon v. Kurtzman, *supra* with Tilton v. Richardson, 403 U.S. 672 (1971).

[6] Minnesota legislative history is recorded by voice tape.

Attorney General's Office investigation into the alleged deceptive fund-raising practices of a Catholic organization, the Pallotine Missions. Tape of House Commerce and Economic Development Committee (September 15, 1977). There was almost no discussion of the statute's effect on any organization even arguably "disfavored," to use the Circuit Court's language. In the Senate Judiciary Sub-Committee hearing on March 7, 1981, it was stated in a dialogue between two Senators that the amendment would allow the state to regulate those organizations soliciting in airports and in the streets. There is no other such discussion in the recorded Senate hearings. (A February 21, 1978, Senate Judiciary Committee hearing, the bill was apparently not recorded.) Less discussion occurred in the House. In one House committee meeting, a legislator did ask if the amendment would allow the regulation of airport soliciting. The answer provided was simply that if the organization in question solicited more than 50% of its funds from the public it would not be exempted. Tape of House Commerce and Economic Development Committee, January 19, 1978. The other references in the House Committee concerning the exemption provision referred solely to the Pallotine Missions.

No debate, discussions or comments concerning the exemption provision occurred on the House or Senate Floors. In short, this legislative history obviously falls far short of even a threshold showing of improper purpose. *United States v. O'Brien, supra.*

In fact, intentional discrimination under the Act is impossible. The manner and amount of money an organization solicits from the public is the decision of the organization alone. There are no dogmatic tenets involved here and therefore no lines of demarcation between favored and disfavored

sects. The conclusions of the Circuit Court are thus particularly inappropriate.

b. Assumptions Regarding Statutory Effect

The Circuit Court's decision was issued on appeal from a district court decision granting summary judgment for plaintiffs. Thus, under rules governing summary judgment, the court was required to construe factual matters in favor of the defendant. *Adickes v. S.H. Kress*, 398 U.S. 144 (1970). Indeed, in constitutional adjudication, constructions in favor of constitutionality are mandatory. *Ashwander v. TVA*, 297 U.S. 288, 346-348 (1936) (Brandeis, J. Concurring).

Nonetheless, the Circuit Court made a number of critical findings for plaintiffs in areas where there was no factual record supporting these conclusions. Here, again, the court reversed settled rules of constitutional and procedural presumption.

The lack of factual bases underlying the Circuit Court's conclusions is not denied by the court itself. As the court stated:

> We would be somewhat more comfortable with our conclusion if the record reflected, or judicial notice could ascertain, that there are in fact specific denominations in the category of churches receiving substantial public funding, amounting however to less than half their income.[7]

637 F.2d at 566.

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[7] The Court stated that its finding was made in absence of argument from the defendants herein. However, the defendants had not had a chance to develop the factual findings regarding this issue and should have been allowed to do so before the granting of summary judgment. The plaintiffs submitted no evidence supporting the court's conclusion, although it was their burden to do so. Adickes v. S.H. Kress, *supra*. See also, Gillette v. United States, 401 U.S. at 452 and discussion *infra* p. 22.

Other factual findings unsupported in the record and very much in dispute were also relied upon by the court in holding for the plaintiffs. Critically, the court assumed that the challenged legislation would benefit "well established churches" while disfavoring new churches. 637 F.2d at 566. There is, again, no factual basis in the record underlying this conclusion. For example, an ostensibly new and controversial organization such as the Church of Scientology is exempt from the reporting and disclosure provisions since it solicits primarily from its membership while "well-established" and non-controversial religious organizations such as the Billy Graham Crusade and the Salvation Army are not exempted. The sole criterion delineating coverage of the challenged statute is the extent of solicitation of funds from the general public. Whether or not an organization is "well-established" is not a dispositive factor.

In concluding that "well-established" sects benefitted under the Act while controversial sects were burdened, the Circuit Court apparently assumed that an exempted sect would be fully exempt from the registration and reporting provisions for all of its fund raising activities with which it was associated. This is not true. Even if a particular church is exempt under the statute an affiliated arm or organization of that church will not be exempt if it solicits over half its money from the general public. Thus, organizations affiliated with what the Court might have assumed to be "well-established" or "favored" sects such as Catholicism, Judaism and Protestantism may be required to register under the Act and indeed, prior to the injunction issued in this case, some had done so. These include, for example, the Little Sisters of the Poor (Catholic), the United Jewish Fund (Jewish) and Lutheran Social Services (Protestant). Thus, again, the court's assump-

tions regarding the effect of the exemption do not withstand scrutiny.

Finally, the Circuit Court's conclusion that the relative burdens placed upon non-exempt as opposed to exempt religious organizations are unconstitutionally onerous is equally non-meritorious. Plaintiffs proffered no evidence that the duties of the non-exempt religious organizations amount to any substantial burden. Financial records are normally kept by all organizations as a matter of course. Moreover, there was no indication that plaintiffs' religious activities were or could be burdened by the Act's requirements. These facts as well, were construed in favor of the plaintiffs and against the defendants.

2. THE EXEMPTION PROVISION IS VALID UNDER THE ESTABLISHMENT CLAUSE.

a. The Exemption Provision Is Based On Neutral And Secular Criteria And Furthers The Purposes Of The Act.

The Circuit Court rightly found that the Act as a whole had a valid secular purpose. 637 F.2d at 567. Yet the Circuit Court in reviewing the exemption provision, focused only on its alleged inequality of treatment and failed to review the provision as it relates to the Act's other provisions and theoretical basis. The Circuit Court's focus was thus too narrow and consequently exaggerates the effect of the exemption provision within the statutory framework. The exemption itself is limited; it applies only to the reporting and disclosure provisions of the Act. An exempted religious organization is subject to the other provisions of the Act; and even an otherwise ex-

empted religion must comply with the registration and reporting provisions if it employs a professional fund raiser. § 309.515(2).

Moreover, the exemption provision here challenged is not unique within the Act. There are a number of other provisions under which any organizations (including a religious organization) may be exempted from registration and reporting. See Minn. Stat. §§ 309.515 1(a), 1(c), 1(e) and 1(f).

All these exemptions are tied to the Act's purposes of providing protection and information to the public. The theoretical basis underlying the Act is the development of a system of accountability and public awareness of those organizations which solicit money from the general public. The majority of charitable organizations do not have beneficially interested stockholders who are in a position to monitor the disposition of the financial accounts of the institution, nor are there any purchasing consumers who by receiving tangible goods and services are in a position to evaluate the worth of those goods and services with respect to their consumer dollar. Rather charitable organizations work substantially without checks and balances. For this reason, it has long been held that it is in the public interest for the state to regulate the financial activities of these organizations and to promote the contributing public's awareness of their activities. *See e.g., National Foundation v. City of Fort Worth*, 415 F.2d 41 (5th Cir. 1969), *cert. denied* 396 U.S. 1040 (1970).

State regulation, as was recognized by the Circuit Court, is not as necessary when there are internal membership checks upon the organization, 637 F.2d at 565. Nor is regulation as needed when there is an external accountability imposed upon the organization by another source.

Thus, § 309.515(1)(c) exempts organizations subject to the supervision of the Minnesota college system or national accrediting organizations. This reflects legislative appreciation that either under State supervision or in the process of accreditation, these organizations are required to make periodic financial disclosures similar to those required under the Act and that these disclosures are already available to the public. Similarly, § 309.515(1)(d) exempts organizations soliciting solely from their membership. This is consonant with the determination that organizations soliciting only from their members are subject to internal accountability.

These concerns are reflected in the challenged exemption as well. A religion which relies on membership support necessarily has an ongoing and consistent contact with its membership which serves as a check on its financial practices. However, when an organization raises more than half of its monies from non-members, it becomes by definition more the financial creature of the public than of its internal membership. At this point, there is a greater public need in providing some sort of external check on its fund-raising activities. By such vehicles as registration statements and requirements of financial reporting the state can assure that the organization which has benefitted so heavily from the contributing public can be financially understood and appropriately evaluated by them. The 50% demarcation between exempt and non-exempt status thus becomes particularly important since it is at this point that the organization by its fund-raising activities has shown that it has elected to be more financially answerable to the public than its private membership. For this reason the 50% demarcation, far from being arbitrary as was suggested

by the Circuit Court, is perhaps the optimum point at which the state can best effectuate the purposes of the Act.[8]

The Circuit Court apparently felt that the legislature had only two choices; either to exempt or include *all* religious organizations within the statutory framework. Certainly, the Minnesota Legislature could have chosen an all or nothing scheme, but as has been shown, the 50% cut off is eminently reasonable. Critically, however in constitutional adjudication, where any cut off line to be drawn is peculiarly a legislative determination. It is not one for the courts. See *State of Minnesota v. Clover Leaf Creameries, supra*; *New Orleans v. Dukes*, 427 U.S. 297 (1976); *Williamson v. Lee Optical*, 348 U.S. 483 (1955). Since the cut off line here is neutrally and secularly based, it is thus proper under the establishment clause. *Gillette v. United States, supra.*

b. *Gillette v. United States* Confirms The Validity of The Exemption Provision Under The Establishment Clause.

Although the Circuit Court's opinion was primarily predicated on its erroneous speculation concerning legislative purpose, the other holding implicit in the opinion appears to be that any exemption cutting across religious lines will necessarily evidence improper purpose and result in an unconstitutional impact upon the non-exempted religious organization. This precise holding was rejected by this Court in the only case ever to reach this issue. *Gillette v. United States*, 401 U.S. 437 (1971). *Gillette* is controlling here.

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[8] The Circuit Court apparently took the position that the exemption was arbitrary because an exempted organization might receive more money from the public than does a non-exempt group. 566 F.2d at 637. The Circuit Court missed the point. The legislative determination was drawn to reflect concerns of accountability to membership, not to dollars received. Thus 50% is the proper standard to apply to further the accountability goal.

Plaintiffs in *Gillette* sought a determination that the Military Selective Service Act of 1967, 50 U.S.C. § 456(j) violated the establishment clause because it allowed exemptions from military service to persons whose religious beliefs included objection to all wars, but did not exempt those whose beliefs included objection to particular wars. Plaintiffs argued that this law operated as a de facto preference for some religious beliefs over others, precisely the point argued here and relied upon by the Court below.

This Court in *Gillette* held that disparate treatment alone was not a sufficient basis to render the law void on establishment clause grounds. As this Court noted:

> The critical weakness of petitioners' establishment claim arises from the fact that § 6(j), on its face, simply does not discriminate on the basis of *religious affiliation or religious belief*, apart, of course, from beliefs concerning war.

401 U.S. at 450 (emphasis added).

Similarly, in this case, the statute distinguishes only between percentages of funds raised from the public. This is not a discrimination of either religious affiliation or religious belief.

This Court also reached the argument present here that the exemption constituted a religious gerrymander. With respect to that point this Court stated:

> Of course, this contention of de facto religious discrimination, rendering § 6(j) fatally under inclusive, cannot simply be brushed aside. The question of governmental neutrality is not concluded by the observation that § 6(j) on its face makes no discrimination between religions, for the establishment clause forbids subtle departures from

> neutrality, "religious gerrymanders," as well as obvious abuses. Still a claimant alleging "gerrymander" must be able to show the absence of a neutral, secular basis for the lines government has drawn.

401 U.S. at 452 (citations omitted). This Court concluded that plaintiffs in that case had not met their burden.

Gillette thus establishes that the Circuit Court was incorrect in assuming a virtual *per se* rule against disparate treatment of religious organizations. Disparate treatment under *Gillette* is permissible if the challenged regulation has, as is present here, a neutral and secular basis.

Gillette also clearly shows that the burden of showing that an otherwise neutral provision constitutes a 'religious gerrymander' is on plaintiffs. Thus, the Circuit Court erred in not requiring the plaintiffs to meet their burden of establishing that the lines of demarcation drawn in the challenged statute did not have a neutral and secular basis.

In fact, the *Gillette* decision virtually mandates the conclusion that the challenged exemption in this case is constitutional. The criterion for exemption in *Gillette* was based on religious dogma grounds, an inviolate part of any religious institution. The same is not true of fund-raising. Although the Circuit Court contended that the challenged Act favors more traditional religious institutions, the State could not have constructed a religious gerrymander in this area even if it wanted to since fund raising practices are not inviolate, vary among religions with no discernible pattern, and even vary with respect to different organizations within one denomination. In such circumstances, a distinction among religious

organizations as is present here, incontrovertedly meets the *Gillette* test.[9]

3. THE CIRCUIT COURT IMPROPERLY APPLIED THE OVERBREADTH DOCTRINE.

Despite the fact that the application of the 'overbreadth' standing to religious clause challenges was disapproved by this Court in *McGowan v. Maryland*, 366 U.S. 420, 433 (1968), the Circuit Court nonetheless applied the doctrine in favor of plaintiffs' establishment clause challenge here. In so doing, the court's decision was without precedent.

In its decision, the Circuit Court relied on *Village of Schaumburg v. Citizens For a Better Environment*, 444 U.S. 620 (1980) which allowed an overbreadth challenge based upon speech grounds. *Schaumburg*, however, is no more than a continuation of the theory that overbreadth challenges are permitted in speech cases because of the interest involved in not chilling the speech rights of persons not before the Court. *Broadrick v. Oklahoma*, 413 U.S. 601 (1973). Parallel concerns are not present in religion cases, *McGowan v. Maryland*, 366 U.S. at 433. *Schaumburg* does not question the principle that overbreadth is "strong medicine" and is to be used only sparingly. Thus, *Schaumburg*, a speech case, cannot be said, without more, to have suddenly transferred the overbreadth doctrine to religious clause cases. *McGowan*, thus remains dispositive.

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[9] To say that there is a religious gerrymander present here is to say that laws which provide aid to sectarian institutions constitute a religious gerrymander between those organizations which have religious schools and those who do not. This has never been the holding of this Court. See Wolman v. Walter, 433 U.S. 229 (1977), Pierce v. Society of Sisters, 268 U.S. 510 (1925).

In *McGowan*, this Court held that certain businessmen were allowed standing to attack a Sunday closing law on establishment clause grounds since they had shown that they were economically affected by the Sunday closing law that was the subject of plaintiffs' lawsuit. The Court was clear that standing without this showing of adverse effect to the plaintiffs would be improper. 366 U.S. 429-433. The *McGowan* plaintiffs were thus not permitted to attack the challenged statute on free exercise grounds since they had not allowed their beliefs to be infringed. As this Court stated "[t]hose persons whose religious rights are allegedly impaired by the statutes are not without effective ways to assert these rights." 366 U.S. at 433.[10]

Here the plaintiffs have not established that they are disadvantaged by the challenged law, since as was noted by the Circuit Court, they have not established that the Unification Church is a religious organization. 637 F.2d 565, 570-571. Thus, in light of the Circuit Court's own conclusions regarding the status of the plaintiffs' organization, it is clear that standing without further showing should not have been allowed. *Citizens Concerned For The Separation of Church and State v. City and County of Denver*, 628 F.2d 1289 (10th Cir. 1980). To grant standing in such circumstance is to reject conclusions of this Court in the *McGowan* case.

At the very least, there is a split in the circuit regarding this point. The Tenth Circuit has recently held that plaintiffs must establish direct standing in order to bring an establishment clause challenge. *Citizens Concerned For The Separation of Church and State v. City and County of Denver, supra.* This

[10] Although the word "overbreadth" was not used in the McGowan opinion, a similar analysis was used in this Court's determination that the plaintiffs would not be allowed to represent the rights of others not before the Court. See Broadrick v. Oklahoma, 413 U.S. at 610, citing McGowan, 366 U.S. 429-430.

holding is directly opposed to the conclusions reached by the Eighth Circuit herein. The Tenth Circuit rule should be followed.

CONCLUSION

For these reasons, this Court should note probable jurisdiction of this appeal.

Dated: April 3, 1981

Respectfully submitted,

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APPENDIX A

UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

No. 80-1131
No. 80-1159

Pamela Valente, Larry Barber, Larry Heft, Kimberly Korman, and Holy Spirit Association for the Unification of World Christianity,

Appellees/Cross-Appellants,

vs.

John R. Larson, Commissioner of Securities, Minnesota Department of Commerce; Warren Spannaus, Minnesota Attorney General; Individually and in Their Official Capacities,

Appellants/Cross-Appellees.

Appeal from the United States
District Court for the District of Minnesota

Submitted: October 13, 1980
Filed: January 7, 1981

Before ROSS, Circuit Judge, GIBSON, Senior Circuit Judge, and SACHS,* District Judge.

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* The Honorable Howard F. Sachs, United States District Judge for the Western District of Missouri, sitting by designation.

SACHS, District Judge.

This is an appeal from an order of the district court for the district of Minnesota[1] permanently enjoining the enforcement of the Minnesota Charitable Solicitations Act, Minn. Stat. §§ 309.50-309.61, "as to any and all religious organizations" and also permanently enjoining utilization of certain sections of the Act "against plaintiffs and other persons claiming to be religious organizations or members thereof." In the same order the district court declared the Act to be unconstitutional as applied to religious organizations and members thereof but constitutional as applied to non-religious organizations and members thereof. The court also ruled certain enforcement sections of the Act unconstitutional as applied to persons "claiming" to be religious organizations or members thereof.

Plaintiffs are the Holy Spirit Association for the Unification of World Christianity (Unification Church) and four persons asserting membership therein and claiming the right to solicit funds for the organization. Defendants are the two state officials charged with enforcement of the Act.

Notice of appeal was filed by the defendant attorney general and the defendant commissioner of securities, department of commerce. A cross-appeal was filed by plaintiffs, complaining of the ruling that the Act was valid as to non-religious organizations. Because plaintiffs were wholly successful in obtaining an injunction prohibiting enforcement of the Act against them, the cross-appeal will be considered only insofar as the issues decided may be pertinent to ruling on the appeal.

We are in general agreement with most of the basic conclusions of Judges Lord and Renner, and affirm those rulings.

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[1] The Honorable Miles W. Lord, United States District Judge. Judge Lord's order followed the recommendation of former magistrate, now United States District Judge, the Honorable Robert G. Renner.

We disagree, however, with some aspects of the disposition of the case, and remand for further proceedings.

All parties agree that the major legal issue in this case is whether the classification made in a religious exemption contained in the Act is invalid because of its unequal application to different religious organizations. We agree with the judges below that the classification is invalid and that the exemption should be expanded to cover all religious organizations.

Contained in the Act is an exemption from certain registration and disclosure requirements for

> [a] religious society or organization which received more than half of the contributions it received in the accounting year last ended (1) from persons who are members of the organization; or (2) from a parent organization or affiliated organization; or (3) from a combination of the sources listed in clauses (1) and (2). Minn. Stat. § 309.515(1)(b).

Subject to exceptions not material at this time,[2] religious organizations qualifying for the exemption need file neither a registration statement, § 309.52, nor an annual report-financial statement, § 309.53, with the securities division of the department of commerce. All other provisions of the Act apply irrespective of any exemption from registration and filing annual statements.

The court below initially granted plaintiffs' motion for a preliminary injunction and denied defendants' motion to dismiss. Plaintiffs then moved for summary judgment, seeking final ruling that the Act was unconstitutional. Plaintiffs assert that the Act is unconstitutional on its face and as applied

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[2] The religious exemption cannot be invoked if the organization employs a professional fund raiser, § 309.515(2), or has had its exempt status revoked by the department of commerce, § 309.515(3).

to the solicitation of funds by members of a religious or non-religious organization.[3] Defendants resisted the motion and filed a cross-motion for partial summary judgment, contending that certain of Plaintiffs' challenges were not justiciable.

We affirm the district court's ruling that the plaintiffs have standing to assert the facial invalidity of the Act, including the classification made in the religious organization exemption.

> Given a case or controversy, a litigant whose own activities are unprotected may nevertheless challenge a statute by showing that it substantially abridges the First Amendment rights of other parties not before the court [citations omitted]. In these First Amendment contexts, the courts are inclined to disregard the normal rule against permitting one whose conduct may validly be prohibited to challenge the proscription as it applies to others because of the possibility that protected speech or associative activities may be inhibited by the overly broad reach of the statute. *Village of Schaumburg v. Citizens for a Better Environment*, 444 U.S. 620, 634 (1980).

In *Schaumburg*, as in the case at bar, there was "an unresolved factual dispute concerning the true character of [plaintiff] organization." 1.c. 633. Thus, regardless of the ultimate determination of plaintiffs' status (religious or non-religious), the nature of the statute called into question by plaintiffs and

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[3] In the district court and on appeal there has been wide-ranging discussion of constitutional issues. This Court has entered an order limiting consideration of issues on appeal. Recognizing the gravity of constitutional adjudications, our decision is confined to the major substantive issue set forth above, and the matters expressly discussed in this opinion. While not prejudging any other issues, we note Judge Renner's comments that the Act has been in effect since 1961, that religious organizations were exempt prior to 1978, and that the legislation has operated without any other controversy requiring judicial interpretation or validation.

the nature of their challenge gives them standing to maintain suit.

We need not in this case decide whether it would be valid to divide religious organizations, like fraternal, patriotic, social, educational, alumni, professional, trade, or learned societies, § 309.515(1)(d), into two classifications: groups funded *solely* from internal sources and groups funded partly or wholly from public solicitations. Membership funding may have built-in safeguards and opportunities for informing contributors whereas solicitation from the public, lacking such safeguards, arguably needs greater public disclosure. The sticking point in this case is the unique classification dividing religious organizations between (1) groups relying primarily on internal funding but also possibly obtaining large amounts and percentages of income from public funding from (2) groups which look to the public for "more than half" of their funding.

We turn to the constitutional implications of this disparate treatment of religious sects. The First Amendment to the Constitution of the United States provides that "Congress shall make no law respecting an establishment of religion . . ." Some forty years ago it was ruled that this clause applies to state legislative enactments as well as to federal action. *Cantwell v. Connecticut*, 310 U.S. 296, 303 (1940). In the landmark Establishment Clause decision it was thereafter stated:

> The "establishment of religion" clause of the First Amendment means at least this: Neither a state nor the Federal Government can set up a church. Neither can pass laws which aid one religion, aid all religions, or prefer one religion over another . . . [The] Amendment requires the state to be a neutral in its relations with groups of religious believers and non-believers . . . State power is no more to be used so as to handicap religions

than it is to favor them. *Everson v. Board of Education*, 330 U.S. 1, 15, 18 (1947).

It has been stated as a fundamental proposition that "[t]he government must be neutral when it comes to competition between sects." *Zorach v. Clauson*, 343 U.S. 306, 314 (1951).

The nondiscrimination principle, in the religious context, has been formulated by the second Justice Harlan as follows:

> In any particular case the critical question is whether the scope of the legislation encircles a class so broad that it can be fairly concluded that (all groups that) could be thought to fall within the natural perimeter (are included). *Welsh v. United States*, 398 U.S. 333, 357 (1970—concurring opinion), citing *Walz v. Tax Comm'n*, 397 U.S. 664, 696 (1970—separate opinion).

It is most difficult, if not impossible, in the present case to ascertain any basis for holding that the separate treatment of various religious organizations in the exemption provision of the Act follows any "natural perimeters" of public policy concerns. The need for public information would seemingly apply equally to religious organizations obtaining 40 and 60 percent of their funding from the public. It is not difficult to imagine a situation in which a religious organization which obtains 40 percent of its funding from the public obtains a substantially higher dollar amount from the public than does a religious organization which obtains 60 percent of its funding from the public. The special burdening of the latter group is in question.

The statutory discrimination between such organizations smacks of "religious gerrymandering,"[4] an apparently inten-

[4] The term is used in *Gillette v. United States*, 401 U.S. 437, 452 (1971) to describe a "subtle departure from neutrality" between sects. In the present case, the departure from neutrality may be less than "subtle" in nature—as will be shown, it has been quickly recognized by most judges who have viewed this type of legislation.

tional favoritism for the religious organizations obtaining some but less than half of their funds from the public. As further discussed, it may be inferred that the draftsmen of this legislation wished to reduce the burdens otherwise imposed on well-established churches which had achieved strong but not total financial support from their members; the draftsmen have exhibited less concern for easing regulations applicable to churches which are new and lacking in a constituency, or which, as a matter of policy, may favor public solicitation over general reliance on financial support from members. Actual discrimination exists if, as we assume, there are church organizations in both categories; intentional discrimination is a very real issue, in the absence of any explanation for the sizable loophole created for some religious organizations.

We would be somewhat more comfortable with our conclusion if the record reflected, or judicial notice could ascertain, that there are in fact specific denominations in the category of churches receiving substantial public funding, amounting however to less than half their income. All other judges who have viewed this issue (the federal judges in Minnesota and three tiers of state court judges in North Carolina, *Heritage Village Church and Missionary Fellowship, Inc. v. State of North Carolina*, 40 N.C.App. 429, 253 S.E.2d 473 (1979) and 299 N.C. 399, 263 S.E.2d 726 (1980)), have assumed or taken judicial notice that there are such churches. In the absence of argument to the contrary from the state officials here, we make the same assumption and conclude that real discrimination exists.

The inexplicable religious classification in the present case would seem dispositive, if the Court is bound to apply the

"ringing phrases" of *Everson*,[5] the *Zorach* insistence on neutrality, and the Harlan test of uniformity in classification. We look to further recent cases, however, for confirmation of our direction, because we recognize that the *Everson* and *Zorach* statements appeared in decisions which rejected Establishment Clause challenges.

The Supreme Court has developed a three-prong test which constitutes a "convenient, accurate distillation" of its "efforts over the past decades to evaluate a wide range of governmental action challenged as violative of the constitutional prohibition against laws 'respecting an establishment of religion,' and thus [has] provide[d] the proper framework of analysis for the issues presented in the case before us." *Meek v. Pittenger*, 421 U.S. 349, 358 (1975).

> First, the statute must have a secular legislative purpose. E.G., *Epperson v. Arkansas*, 393 U.S. 97. Second, it must have a "primary effect" that neither advances nor inhibits religion. E.g., *School District of Abington Township v. Schempp*, 374 U.S. 203. Third, the statute and its administration must avoid excessive government entanglement with religion. E.g., *Walz v. Tax Comm'n*, 397 U.S. 664.

Meek restates tests first announced in *Lemon v. Kurtzman*, 403 U.S. 602, 612-3 (1971). The *Lemon* tests have become general standards, frequently applied. *Stone v. Graham*, —— U.S. ——, 101 S.Ct. 192 (1980).

There can be little question that the Minnesota Act, viewed as a whole, has a valid secular purpose. The legislative intent underlying the measure appears from the face of the Act to be the prevention of fraudulent and deceptive conduct in the

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[5] Justice Blackmun's characterization, in his dissenting opinion as Circuit Judge in *In re Weitzman*, 426 F.2d 439, 448 (8th Cir. 1970).

solicitation of funds in the name of charity and the disclosure of facts which may be useful to the public, when evaluating such solicitations. *See Heritage Village Church and Missionary Fellowship, Inc. v. State of North Carolina*, supra, 263 S.E.2d at 731 (N.C. 1980). Such purpose is within the ambit of the state's police power.

The exemption provision of the Act, § 309.515, without considering the detailed classifications, also appears generally to serve the valid purpose of freeing from regulation certain organizations for which public disclosure of funding would not significantly enhance the availability of information to contributors. Among the groups exempted, as mentioned above, are those such as patriotic and fraternal societies which limit solicitation to voting members and certain charitable organizations which do not solicit in excess of $10,000 annually from the public. The safeguards attending membership funding have been mentioned; the small annual dollar amount collected by the exempted charitable organizations, in combination with the other requirements expressed in the provision, such as the use of volunteer solicitors, may be said to offset the legislatively perceived need for public disclosure at the state level. Educational institutions which are supervised by a state board or a national accrediting association are exempted; private foundations which solicit from fewer than 100 persons are exempted; and charitable organizations which solicit for a person named at the time of solicitation and which transfer all funds without restriction to that person are also exempted. A valid, secular legislative purpose may be discerned for each of these exemptions.

No such sound and justifiable purpose can be found in the system of classifying religious organizations. On the contrary, as previously suggested, the exemption of organizations which

conduct substantial public solicitations, if such solicitations account for less than half of the organization's income, appears to be designed to shield favored sects, while continuing to burden other sects. The classification has no ascertainable "secular legislative purpose" and does not survive the first portion of the *Lemon* test.

The defendants, relying on *Gillette v. United States*, 401 U.S. 437 (1971), urge that a generally valid secular purpose, such as the avoidance of unnecessary regulation, defeats an Etablishment Clause challenge to a statute, even though the burdens may fall more heavily on certain religious groups. Petitioners in *Gillette* claimed exemption from military service under § 6(j) of the Military Sective Service Act which exempted from service in the armed forces any person "who, by reason of religious training and belief, is conscientiously opposed to participation in war in any form." Petitioners challenged the section as violative of the Free Exercise and Establishment Clauses. Petitioners' contention was that "the special statutory status accorded conscientious objection to all war, but not objection to a particular war, works a de facto discrimination among religions." 1.c. 451-52. For example, it was argued that some religious faiths distinguish between "just" and "unjust" wars. 401 U.S. at 452, 470 (dissent). Thus it was said that some conscripts might be forced to serve in violation of religious scruples, whereas a member of another sect, having more generalized objections toward all wars, would be exempted from service. Having found that the statute on its face did not discriminate on the basis of religious affiliation, the Supreme Court considered whether there had been some subtle departure from governmental neutrality. In determining that there had been no such departure, the Supreme Court found that petitioners had failed to make the requisite showing of the

absence of a neutral, secular basis for the line drawn between objectors to all wars and objectors to a particular war. 1.c. 452. The Court sustained the legislative exemption, relying on the difficulty of devising a standard to cover a "virtually limitless variety of beliefs," petitioners' failure to articulate a feasible scheme of exemption, and the increased danger of government entanglement with religion and of erratic decisionmaking if a broadened exemption were devised. 1.c. 453-58.

Defendants' reliance on *Gillette* is clearly misplaced. The challenged statute in this case expressly separates two classes of religious organizations and makes the separation for no valid secular purpose that has been suggested by defendants. Inexplicable disparate treatment will not generally be attributed to accident; it seems much more likely that at some stage of the legislative process special solicitude for particular religious organizations affected the choice of statutory language. The resulting discrimination is constitutionally invidious.

If it be necessary to apply the second part of the *Lemon* test to the exemption provision of the Act, we conclude that a significant effect of the classification made within the religious exemption section could be to assist (by deregulation) certain religious groups, while burdening others. The benefit conferred on religious organizations that do not fall subject to the registration and disclosure requirements of the Act constitutes a substantial advantage; the burden of compliance with the Act is certainly not *de minimis*.

The registration section, § 309.52, requires, prior to any solicitation, that groups subject to the Act file with the state a detailed registration statement on forms provided by the

state.[6] Providing the items of information listed in the statute is not an insignificant undertaking, especially in view of the open-ended provision of subsection (p) for "[s]uch other information as the department may . . . require . . ." A

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[6] § 309.52 Registration requirement

Subdivision 1. No charitable organization, except as otherwise provided in section 309.515, shall solicit contributions from persons in this state by any means whatsoever unless, prior to any solicitation, there shall be on file with the department upon forms provided by the department, a registration statement containing, without limitation, the following information:

(a) Legally established name.

(b) Name or names under which it solicits contributions.

(c) Form of organization.

(d) Date and place of organization.

(e) Address of principal office in this state, or, if none, the name and address of the person having custody of books and records within this state.

(f) Names and addresses of officers, directors, trustees, and chief executive officer.

(g) Federal and state tax exempt status.

(h) Denial at any time by any governmental agency or court of the right to solicit contributions.

(i) Date on which accounting year of the charitable organization ends.

(j) General purposes for which organized.

(k) General purposes for which contributions to be solicited will be used.

(l) Methods by which solicitation will be made.

(m) Copies of contracts between charitable organization and professional fund raisers relating to financial compensation or profit to be derived by the professional fund raisers. Where any such contract is executed after filing of the registration statement, a copy thereof shall be filed within seven days of the date of execution.

(n) Board, group or individual having final discretion as to the distribution and use of contributions received.

(o) The amount of total contributions received during the accounting year last ended.

(p) Such other information as the department may by rule or order require to promote fairness of the solicitation and to assure full and fair disclosure of all material information to the department.

* * *

Subd. 2. The first registration statement filed by a charitable organization shall include a financial statement of its operation for its most recent 12 month period immediately preceding the filing of the first registration statement.

* * *.

group filing for the first time must provide, in addition to the registration statement, "a financial statement of its operation for its most recent 12 months." § 309.52(2).

The financial statement expected of first-time filers becomes an annual obligation under § 309.53, which mandates an annual report on state forms accompanied by a financial statement.[7] Such statements must contain the following: total receipts and income; costs of management, fund raising, and public education; and funds transferred out of the state and remaining within the state with a breakdown of disbursement

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[7] § 309.53 Annual report

Subdivision 1. Except as otherwise provided in subdivision 1a of this section, every charitable organization required to file a registration statement pursuant to section 309.52 shall file an annual report with the department of commerce upon forms provided by the department or on forms identical thereto on or before June 30 of each year if its books are kept on a calendar year basis. For cause shown the department may extend the time for filing the annual report for a period not to exceed three months.

Subd. 2. Such annual report shall include a financial statement covering the immediately preceding 12 months period of operation, and shall be executed by any two duly constituted officers of the charitable organization, who shall acknowledge that it was executed pursuant to resolution of the board of directors or trustees, or if there be no such board, then by its managing group which has approved the content of the annual report.

Subd. 3. The financial statement shall include a balance sheet, statement of income and expense, and statement of functional expenses, shall be consistent with forms furnished by the department, and shall be prepared in accordance with generally accepted accounting principles so as to make a full disclosure of the following, including necessary allocations between each item and the basis of such allocations:

(a) Total receipts and total income from all sources;

(b) Cost of management and general [sic];

(c) Cost of fund raising;

(d) Cost of public education;

(e) Funds or properties transferred out of state, with explanation as to recipient and purpose;

(f) Total net amount disbursed or dedicated within this state, broken down into total amounts disbursed or dedicated for each major purpose, charitable or otherwise;

(g) Names of professional fund raisers used during the accounting year and the financial compensation or profit resulting to each professional fund raiser. Unless otherwise required by this subdivision, the financial statement need not be certified. * * *.

or dedication. In the words of another court considering a substantially equivalent statute,

> However commendable as a sound business practice, such an audit does not spring full blown without considerable expense and administrative coordination.[8] *Heritage Village and Missionary Fellowship, Inc. v. State of North Carolina*, supra, 263 S.E.2d at 733 (N.C. 1980).

It is manifest that certain religious groups will suffer material burdens as a result of the obligations imposed by the Act and that certain other religious groups, not subject to the Act by virtue of the predominance of membership funding, will enjoy complete exemption from the demands of registration or disclosure. We must conclude that the Minnesota Statute prefers some religions over others. Such preference is in conflict with the amendment prohibiting establishment of religion by law, in the absence of compelling secular justifications like those sustained in *Gillette*.

In light of our conclusion that the classification made in Minn. Stat. § 309.515(1)(b) significantly burdens some religious groups and has no saving secular purpose, we need not examine the exemption for excessive government entanglement with religion, the third consideration in the Supreme Court's framework of Establishment clause analysis.

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[8] Defendants belittle the authority of the North Carolina litigation, pointing to the close division of judges on the North Carolina Supreme Court. We are impressed, however, that the trial judge (now Judge Ervin of the United States Court of Appeals for the Fourth Circuit) and the intermediate appellate court (in an opinion authored by a present United States District Judge) anticipated the majority ruling of the North Carolina Supreme Court. First Amendment jurisprudence is a responsibility of state court judges as well as federal judges. While our analysis differs somewhat from the rationale of the North Carolina courts, at least in form, we acknowledge that we are strengthened in our conclusion by the North Carolina resolution of issues which are essentially identical with those at bar.

Having approved of the district court's major holding, invalidating the religious classifications in the exemption section of the Act, we further conclude that the decision below is sound in its determination that all sects are entitled to claim the religious organization exemption, disregarding the invalid classification. It would be logically possible to strike the entire religious exemption as unconstitutional, rather than enlarge the exemption to cover all religious organizations. We believe the district court exercised good judgment, in accordance with probable legislative intent, in selecting the least disruptive method of editing the Act to eliminate an unconstitutional provision.

Under the rule of severability (Minn. Stat. § 309.61) the surviving provision in the exemption section will comprehensively apply to "a religious society or organization." We recognize that the resulting legislative scheme could be questioned as favoring all religious organizations over others. In light of the traditional governmental reluctance to intrude unnecessarily in the affairs of religious organizations, and the absence of parties ready to litigate the issue posed, we do not question the broadened exemption provision.

Contrary to an assumption made below in dealing with the intricacies of this rather complex statute, the exemption does not apply to the entire Act. Portions of the Act still literally apply to religious organizations.[9] The injunction is thus overly broad. In the absence of full consideration and final rulings below, we do not discuss possible constitutional issues regarding the remaining sections, as applied to all religious organizations. A cautious approach to such issues is mandated by

[9] For example, deceptive names and practices are forbidden, the sale of contributor lists is forbidden, and solicitors must supply tax deductibility information to contributors. Minn. Stat. §§ 309.-55(1)(5)(6), 309.556(b).

NLRB v. Catholic Bishop of Chicago, 440 U.S. 490 (1979). *Note however, Christian Echoes National Ministry, Inc.* v. *United States*, 470 F.2d 849 (10th Cir. 1972), cert. denied. 414 U.S. 864 (1973); *Securities and Exchange Commission v. World Radio Mission, Inc.*, 544 F.2d 535 (1st Cir. 1976); *In re Rabbinical Seminary*, 450 F. Supp. 1078 (E.D.N.Y. 1978), for applicability of disclosure requirements to the financial and political activities of religious organizations.

The validity of the regulation of all charitable solicitation as such need not be closely considered at this time to determine if the dicta favorable to such regulation in *Village of Schaumburg*, supra at 637-8, is sound and controlling here. The views of the district court on this subject were expressed without benefit of the *Schaumburg* decision. In any event, on remand, the parties will have an opportunity to focus their contentions on these and other provisions of the Act which have received only marginal attention, and will have the guidance of *Schaumburg* in making such examination.

The ruling that plaintiffs and others "claiming" to be religious organizations should enjoy the religious exemption and should be free from all regulation under the Act does not appear to be justified, and that much of the injunctive order is also disapproved. A "bare assertion . . . without the production of any evidence . . . is simply not sufficient to sustain [an] assertion that [the Unification Church] is a religious organization." *United States v. Berg*, No. 80-1432 (8th Cir., December 8, 1980). Plaintiffs' claims should not be accepted without inquiry. The parties should have an opportunity to develop the record and obtain rulings below. It may be observed, however, that a considerable burden is on the state, in questioning a claim of a religious nature. Strict or narrow construction of a statutory exemption for religious organiza-

tions is not favored. *Washington Ethical Society v. District of Columbia*, 249 F.2d 127, 129 (D.C. Cir. 1957, Burger, J.). Judicial determination of religious sincerity and status is a most sensitive undertaking, but is not without precedent. *Gillette*, supra at 457, (whether a belief is "truly held" is open to question, the "truth of a belief" is not); *Wisconsin v. Yoder*, 406 U.S. 205, 219-29 and 235 (1972) (sincerity of religious belief demonstrated by conduct); *Founding Church of Scientology v. United States*, 409 F.2d 1146, 1162 (D.C.Cir. 1969), cert. den., 396 U.S. 963 (1969) (declining to hold summarily that plaintiff is a religion; claim of religious status is subject to contradiction by showing of insincerity of beliefs). Cf. *Walker v. Wegner*, 477 F. Supp. 648, 652 (D.S.D. 1979) (preliminary injunction granted against a statutory scheme involving *administrative* determination of "whether a particular cause is religious"), affirmed on other grounds, 624 F.2d 60 (8th Cir. 1980).

In summary, we agree with the district court's holding that plaintiffs have standing to challenge the classification made in the exemption section of the Act, as it pertains to religious organizations; we agree with the court's invalidation of the classification made in that section; we agree that the exemption section should apply to all religious organizations, subject to possible legislative revision; we disagree with the conclusion that no part of the Act may be applied to religious organizations, but leave open questions of construction and validity for further development, including the application of the Act to charitable organizations; and we disagree with the conclusion that plaintiffs and others claiming the religious exemption should automatically enjoy such exemption, but leave open the question of plaintiffs' status for further development.

The judgment below is vacated and the cause remanded for entry of a modified injunction and further proceedings consistent with this opinion.

A true copy.

Attest:

CLERK, U. S. COURT OF APPEALS, EIGHTH CIRCUIT.

APPENDIX B1

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA
FOURTH DIVISION

Civil 4-78-453

PAMELA VALENTE, et al.,

Plaintiffs,

vs.

JOHN R. LARSON, et al.,

Defendants.

ORDER

Based upon the November 15, 1979, Report and Recommendation of the Honorable Robert G. Renner, United States Magistrate,

IT IS HEREBY ORDERED that plaintiffs' motion for summary judgment is granted in part and denied in part, and defendants' motion for partial summary judgment is granted in part and denied in part, as follows:

1. The Minnesota Charitable Solicitations Act, Minn. Stat. §309.50 *et seq.*, is unconstitutional as applied to religious organizations and members thereof;

2. The Act is constitutional as applied to non-religious organizations and members thereof;

3. Sections 309.534, subd. 1(a), and 309.581 of the Act is unconstitutional as applied to persons claiming to be religious organizations or members thereof;

4. The constitutionality of the application of section 309.-532 to plaintiffs and others whose claims to a religious exemption are challenged by the State is a nonjusticiable issue;

5. The Commissioner of Securities is permanently enjoined from enforcing the Act as to any and all religious organizations;

6. The Commissioner of Securities is permanently enjoined from utilizing sections 309.534, subd. 1(a), and 309.581 to enforce the Act as against plaintiffs and other persons claiming to be religious organizations or members thereof.

Dated: January 19, 1980.

MILES W. LORD
U. S. District Judge

APPENDIX B2

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA
FOURTH DIVISION

Civil 4-78-453

Pamela Valente, Larry Barber, Larry Haft and Kimberly Korman, and the Holy Spirit Association for the Unification of World Christianity,

Plaintiffs,

vs.

John R. Larson, Commissioner of Securities, Minnesota Department of Commerce; Warren Spannaus, Minnesota Attorney General; individually and in their official capacities,

Defendants.

REPORT AND RECOMMENDATION

The above-captioned case came on for hearing before the undersigned United States magistrate on August 31, 1979 pursuant to the plaintiffs' motion for summary judgment and the defendants' motion for partial summary judgment and by Order of the Honorable Miles W. Lord, United States District Judge, designating the undersigned to hear and make recommendation for the disposition of the same in accordance with 28 U.S.C. §636(b)(1)(B).

Barry A. Fisher appeared on behalf of the plaintiffs. Minnesota Special Assistant Attorneys General William P. Marshall, Karen G. Schanfield and D. Douglas Blanke appeared

on behalf of the defendants. The court, having considered the briefs and arguments of counsel as well as the entire record herein, hereby makes the following Report and Recommendation.

I. BACKGROUND OF THE CASE

By this action, plaintiffs seek to have the Minnesota Charitable Solicitations Act, Minn. Stat. §309.50 *et seq.* (1978) (hereinafter, the "Act") declared unconstitutional on its face and as applied to them. They also seek a permanent injunction barring its enforcement.

On July 5, 1979 the district court entered an Order granting plaintiffs' motion for a preliminary injunction barring the statute's enforcement as to them and denying the defendants' motion to dismiss. That Order was based upon a *de novo* review of the May 3, 1979 Report and Recommendation (hereinafter, "Report") of the undersigned.

By their present motion, the plaintiffs seek summary judgment declaring the Act unconstitutional on its face and permanently enjoining its enforcement against them. By their motion for partial summary judgment, the defendants seek an order declaring that section 309.532, the revocation provision, and section 309.534, the cease and desist provision, are not properly justiciable.

The factual circumstances surrounding the case have not changed substantially since this court issued its May 3 Report. Except to the extent that they are herein modified, the factual premises set forth the Report are incorporated by reference into this Report and Recommendation.

II. STANDING TO BRING MOTION FOR SUMMARY JUDGMENT

The issue which plaintiffs' summary judgment motion presents is whether or not the Minnesota Charitable Solicita-

tions Act is constitutional as it applies to solicitation by religious organizations or groups claiming to be religious organizations. Plaintiffs ask the court to assume, and even conclude, as part of their motion, that they are members of a religious organization, that the plaintiff Holy Spirit Association for the Unification of World Christianity (hereinafter, "Unification Church") is a religious organization, and that the activity in which it and the individual plaintiff members are engaged is solicitation for religious purposes.

The defendants contend that the plaintiffs do not have standing to challenge the regulatory scheme embodied by the Act based upon their allegation, supported only by disputed evidence, that the Unification Church is a religion and that its fund raising activity is a religious practice. They contend that only when the court has reached a determination of these factual issues may the constitutional issues be reached.

Plaintiffs counter that, even if the court cannot conclude that the plaintiffs are a religious organization and members thereof, the overbreadth doctrine allows them to challenge the statute without having to make a conclusive showing regarding their religious activities prior to such an adjudication.

While it is true that application of the overbreadth doctrine may be "strong medicine", *Broadrick vs. Oklahoma*, 413 U.S. 601, 613, 93 S.Ct. 2908 (1973); the doctrine has been applied in cases where statutes have sought to regulate only spoken words, *Gooding vs. Wilson*, 405 U.S. 518, 520, 92 S.Ct. 1103 (1972); where statutes have ensnared rights of association, *Keyishian vs. Board of Regents*, 385 U.S. 589, 605-610, 87 S.Ct. 675 (1967); where statutes have purported to regulate the time, place and manner of expressive or communicative conduct, *Grayned vs. City of Rockford*, 408 U.S. 104, 114-121, 92 S.Ct. 2294 (1972); or where statutes required the official

approval of First Amendment activity by local functionaries under laws that delegated standardless discretionary powers, thus resulting in prior restraints without sufficient due process protection, *Shuttlesworth vs. Birmingham*, 394 U.S. 147, 150-153, 89 S.Ct. 935 (1969); *Freedman vs. Maryland*, 380 U.S. 51, 56, 85 S.Ct. 734 (1965). See, generally, *Broadrick vs. Oklahoma, supra*, 413 U.S. at 612-613.

It is clear that the issue of whether a statute or ordinance is void on its face because it impinges upon constitutionally protected activities is a legal, not a factual, question and therefore one which is appropriate for summary judgment. *Holy Spirit Association for the Unification of World Christianity vs. Alley*, 460 F.Supp. 346, 347 (N.D.Tex. 1978). *See also, ISKCON, Inc. vs. Lentini*, 461 F.Supp. 49 (E.D.La 1978); *Swearson vs. Meyers*, No. 78-2034 (D.Kan. 1978) (granting summary judgment based upon an earlier decision on a preliminary injunction motion in *Swearson vs. Meyers*, 455 F. Supp. 88 (D.Kan. 1978)).

In the instant case, the plaintiffs have submitted substantial, although not uncontroverted, evidence of the religious nature of the Unification Church and of their solicitations. They have challenged a statute regulating their rights to freedom of speech, religion and association, not only on substantive grounds but also on grounds that its vagueness and authorization of prior restraints violates their due process rights. These rights are not insubstantial, and neither is the legitimacy of plaintiffs' challenge to the constitutionality of the statute.

Plainly, factual disputes exist as to whether or not the individual plaintiffs are members of a religion and whether or not their activities are religious or commercial, just as the defendants contend. However, in light of the circumstances

of this case, the court must conclude that these issues, although they may ultimately need to be resolved in order to determine whether or not plaintiffs must register, are not material to a legal interpretation of the statute itself. The questions raised by the plaintiffs' motion for summary judgment attacking the Act's constitutionality are viable.

III. ESTABLISHMENT CLAUSE VIOLATIONS

Plaintiffs allege that the exemptions contained in section 309.515 facially discriminate against their religion in violation of the Establishment Clause of the First Amendment. Section 309.515(b) exempts from registration

> "A religious society or organization which received more than half of the contributions it received in the accounting year last ended (1) from persons who are members of the organization; or (2) from a parent organization or affiliated organization; or from a combination of the sources listed in clauses (1) and (2) . . ."

For reasons set forth in the May 3 Report, pp. 18-19, the court now holds that the above provision violates the second of the requirements set forth by the Supreme Court in *Lemon vs. Kurtzman*, 403 U.S. 602, 91 S.Ct. 2105 (1968), in that it inhibits religious organizations which receive more than half of their contributions from non-members, and thereby enhances religious organizations which receive less than half from non-members. The statute's failure to treat all religious organizations equally renders the entire Act unconstitutional as it applies to religious organizations.

This holding is by itself sufficient to grant partial summary judgment to plaintiffs on the constitutionality of the Act as applied to religious organizations. It is, therefore, unnecessary for the court to further consider the substantive provisions of the Act as they apply to religious organizations.

The court, however, finds that the substantive provisions of the Act are not offensive to the constitution in their application to non-religious organizations, for their solicitation rights do not give rise to the high degree of First Amendment protection afforded solicitations by those of a religious nature. As to them, the Act is a legitimate exercise of the state's police power to regulate speech of a commercial nature. *Ohralik vs. Ohio State Bar Association*, 436 U.S. 447, 455-6, 98 S.Ct. 1912, 1918-9 (1978).

IV. DUE PROCESS CLAIMS

For the plaintiffs, however, the ultimate question of whether the Unification Church is a religious organization and thus forever protected by this decision from regulation under the Act must still be determined. This determination may well have to be made in the future as respects other organizations claiming a religious exemption.

Plaintiffs argue that the procedural framework for making that decision allows imposition of a prior restraint without adequate constitutional safeguards. The defendants claim that the constitutionality of the statute's enforcement provisions is not justiciable because they do not come into play unless a person has already registered, which these plaintiffs have not done.

A. *Justiciability*

The registration revocation and suspension provisions of the Act, contained in section 309.532, subds. 1, 3, 4 and 5, authorize the state Department of Commerce to suspend or revoke a registration and thus to prevent an organization from lawfully soliciting, if the organization: (1) has filed an incomplete, false or misleading registration, (2) has engaged in a fraudulent, deceptive or dishonest practice, (3) is en-

joined from continuing a solicitation practice or (4) has violated the Act.

The cease and desist provisions of section 309.534, subd. 1(a) authorize the Commissioner of Securities of the Department of Commerce to issue orders compelling a person to stop violating the Act.

Since it is a violation of the Act for a non-exempt individual or organization to solicit without first registering with the Department of Commerce, an unregistered party claiming to be a religious organization could be served with an administrator's *ex parte* cease and desist order requiring the party to cease any solicitations. Thus, the fact that the plaintiffs are not registered under the Act does not deprive the state from taking action against them under the cease and desist section. Consequently, this court finds the constitutionality of that provision of the Act to be a justiciable issue.

As to the suspension and revocation provision, however, the defendants' contention appears to be meritorious. The court has already found the Act to be unconstitutional and therefore inapplicable to religious organizations. Thus, the only question remaining concerns the process due a person or organization claiming a religious exemption from the registration provision. Since such a party would not have registered under the Act in the first place, the issue of revocation or suspension of registration would never arise. Thus, no justiciable controversy remains as to the constitutionality of section 309.532.

B. *Due Process Violations*

As this court has previously held, solicitation in connection with the dissemination of information and espousal of religious beliefs is, without a doubt, an activity protected by the First Amendment. *Murdock vs. Pennsylvania*, 319 U.S. 105, 109-11, 63 S.Ct. 870, 873-4 (1943); *Cantwell vs. Con-*

necticut, 310 U.S. 296, 304-5, 60 S.Ct. 900, 903-4 (1940); *ISKCON, Inc. vs. Rochford*, 505 F.2d 263, 270 (7th Cir. 1978); *Fernandez vs. Limmer*, 465 F.Supp. 493, 497 (N.D.Tex. 1979); *ISKCON, Inc. vs. Lentini, supra* at 51; *Hall vs. McNamara*, 456 F.Supp. 245, 246 (N.D.Cal. 1978); *ISKCON, Inc. vs. Bowen*, 456 F.Supp. 437, 441 (S.D.Inc. (sic) 1978); *ISKCON of Berkeley, Inc. vs. Kearnes*, 454 F.Supp. 116, 118 (E.D.Cal. 1978); *ISKCON, Inc. vs. Engelhardt*, 425 F.Supp. 176, 179 (W.D.Mo. 1977).

The Minnesota Charitable Solicitations Act regulates conduct presumptively entitled to First Amendment protection. It requires registration before there can be solicitation. It further provides for abridgement of the right to solicit and allows for the imposition of criminal sanctions, whether or not a person is registered.

Rules restricting First Amendment expression are inherently suspect, and bear a heavy presumption against their constitutional validity. *Shuttlesworth vs. Birmingham, supra*; *Bantom Books vs. Sullivan*, 372 U.S. 58, 83 S.Ct. 631 (1968); *Hall vs. McNamara, supra*. Specific restrictions on First Amendment expression can be justified only by compelling governmental interest which is unachievable by any less restrictive alternative: "The interest advanced must be paramount, one of vital importance, and the burden is on the government to show the existence of such an interest." *Elrod vs. Burns, supra*, 427 U.S. 347, 362, 96 S.Ct. 2673, 2684 (1976). *Buckley vs. Valeo*, 424 U.S. 1, 96 S.Ct. 612 (1976); *ISKCON, Inc. vs. Lentini, supra* at 53; *ISKCON, Inc. vs. Bowen, supra* at 443.

To sustain an attack against its constitutionality, a statute which constitutes a prior restraint must seek to restrain only speech which is unprotected and must be designed to filter out those who will engage in protected speech from those who will

engage in unprotected speech, restraining only the latter. *ISKCON of Berkeley, Inc. vs. Kearnes, supra* at 119-120. To the extent that protected speech is restricted in the absence of a compelling government interest, a statute must be determined to be unconstitutional.

In the instant case, the defendants contend that even if the Act is unconstitutional as applied to religious organizations, the Unification Church, as a non-religious entity, must still comply. Thus, the defendants raise a question, in the first instance, of whether or not the activity in which plaintiffs seek to engage is, indeed, protected at all.

In such situations, the standards set forth in *Freedman vs. Maryland, supra,* are appropriate for consideration. In that case, it was held that a process which requires the prior submission of a film to a censor avoids constitutional infirmity only if it takes place under standards designed to obviate the dangers of a censorship system: (1) The burden of proving that the film is unprotected expression must rest on the censor; (2) the exhibitor must be assured, by statute or authoritative judicial construction, that the censor will, within a specified brief period, either issue a license or go to court to restrain showing of the film; (3) any restraint imposed in advance of a final judicial determination on the merits must similarly be limited to preservation of the status quo for the shortest fixed period compatible with sound judicial resolution; and (4) the procedure must assure a prompt final judicial decision. *Freedman vs. Maryland, supra,* 380 U.S. at 56.

When the subject matter of the dissemination concerns a religious practice, the need for such safeguards is even more compelling. *ISKCON of Western Pennsylvania, Inc. vs. Griffin,* 437 F.Supp. 666, 670 (W.D.Pa. 1977). And when the means of dissemination is interpersonal verbal communication rather

than film or writing, the problem of promulgating and adhering to strict enough due process standards becomes even more difficult to resolve. As the *Kearnes* court pointed out,

> "The problem of prediction is the key to the doctrine of prior restraint. For example, prior restraints are permissible to a limited extent in obscenity cases because one knows the content of the speech before it takes place. In most instances, however, one cannot know precisely what activity an individual will pursue, and thus any system which conditions the right to speak upon a finding of whether or not the individual is likely to engage in protected speech generally will involve a significant margin of error such that some persons will be wrongfully restrained from exercising their constitutional rights, while others are permitted to engage in proscribed activity. Within this margin or error, the officials administering the system will have latitude to exercise their judgment and discretion. Necessarily, the possibility of censorship is introduced and First Amendment guarantees threatened." *ISKCON of Berkeley, Inc. vs. Kearnes, supra* at 122. *See also, Southeastern Promotions, Inc. vs. Conrad,* 420 U.S. 546, 558-9, 95 S.Ct. 1239 (1975); *Hall vs. McNamara, supra* at 247.

In order to support a prior restraint under such dubious circumstances, there must exist a clear and present danger that a substantive evil will result, or that the gravity of the evil to be avoided, discounted by the likelihood it will not occur, justifies such an invasion of free speech. Where the evil to be avoided is fraud, the state must show a high probability that the individual is about to engage in the proscribed conduct. *ISKCON of Berkeley, Inc. vs. Kearnes, supra* at 123.

1. *Cease and Desist Provision*

Section 309.534, subd. 1, seeks to ensure compliance with the requirements of the Act as follows:

> "Whenever it appears to the commissioner that any person has engaged or is about to engage in any act or practice constituting a violation of this chapter or any rule or order hereunder:
>
> "(a) He shall have the power to issue and cause to be served upon the person an order requiring him to cease and desist from violations of sections 309.50 to 309.61. The order shall be calculated to give reasonable notice of the rights of the person to request a hearing thereon and shall state the reason for the entry of the order. A hearing shall be held not later than seven days after the request for the hearing is received by the commissioner after which and within 20 days of the date of the hearing the commissioner shall issue a further order vacating the cease and desist order or making it permanent as the facts require. All hearings shall be conducted in accordance with the provisions of chapter 15. If the person to whom a cease and desist order is issued fails to appear at the hearing after being duly notified, the person shall be deemed in default, and the proceeding may be determined against him upon consideration of the cease and desist order, the allegations of which may be deemed to be true. The commissioner may adopt rules of procedure concerning all proceedings conducted pursuant to this subdivision.
>
> "(b) He may bring an action in the district court in the appropriate county to enjoin the acts or practices and to enforce compliance with sections 309.50 to 309.61 or any rule or order thereunder and he may refer the matter

to the attorney general to prosecute violations as set forth in sections 309.57 and 309.59."

The due process safeguards contained in this provision of the Act are inadequate to support the imposition of prior restraint upon First Amendment religious expression rights in light of the degree of seriousness of the evil sought to be proscribed. A simple application of the *Freedman* standards, which this court considers to provide only minimal protection, reveals the inadequacies most plainly.

First, the burden of proving that the activity in which the state believes a person is about to engage is not protected is not expressly placed on the Commissioner. Indeed, a cease and desist order may be issued in the first instance upon an administrator's non-adversary determination that the person had engaged in or is about to engage in any act or practice which is a violation of the Act, including solicitation prior to registration. Furthermore, as regards court enforcement of administrative cease and desist orders, section 309.534, subd. 1(b), requires only a "proper showing" for an injunction to issue. Thus, the Act does not comply with the *Freedman* burden of proof criterion.

Second, the restraint which the statute forces upon the exercise of the First Amendment rights of one claiming a religious exemption does not preserve the status quo, but rather destroys it, because the status quo for a religious organization is unhindered exercise of those rights. This too flies in the face of the procedural proscriptions of *Freedman*.

Finally, the cease and desist order may stay in effect for the seven days the Department may lawfully wait before holding an administrative hearing plus the 20 days which the Commissioner may take to decide the matter, and then an undetermined amount of time between the Department's final decision

and the resolution of an appeal by the district court. No stays are mandatory during either the administrative process or the appeal. This is also insufficient. *See National Socialist Party of America vs. Skokie*, 432 U.S. 43, 97 S.Ct. 2205 (1977).

Because of the vague provisions contained within the statute pertaining to the requirements for proper registrations (section 309.52) and grounds for suspension or revocation of a registration (section 309.532), the amount of standardless discretion is too great for the degree of procedural protection afforded. *Cantwell vs. Connecticut, supra*, 310 U.S. at 305, 60 S.Ct. at 904. *See* Report, pp. 13-15.

2. *Criminal Penalties*

Section 309.581 of the Act provides that any person who "wilfully and knowingly" violates any provision of the Act is subject to criminal misdemeanor liability. Since registration is required under the Act before solicitation may take place, a person claiming a religious exemption may be prosecuted for failing to register prior to solicitation even though the state has never shown up to that point that the person was not exempt from registration because of its status as a religious organization.

Criminal enforcement of this type of prior restraint is not permissible. *See Cantwell vs. Connecticut, supra*; *Schneider vs. State*, 308 U.S. 147, 60 S.Ct. 146 (1939); *Lovell vs. City of Griffin*, 303 U.S. 444, 58 S.Ct. 666 (1938). Therefore, section 309.581 is void as to anyone claiming a religious exemption to the Charitable Solicitations Act.

CONCLUSION

While a factual dispute exists as to the legitimacy of the plaintiffs' claim to be a religious organization and members thereof, the legal issue of whether or not the Minnesota

Charitable Solicitations Act is constitutional in its application to religious solicitors does not rest upon a resolution of this factual issue. The overbreadth doctrine gives the plaintiffs standing to challenge the Act's constitutionality by motion for summary judgment.

The Act is facially unconstitutional as applied to religious organizations and members thereof because section 309.515 (b) exempts some religious organizations and not others from the requirements of the act, thus creating a preference offensive to the Establishment Clause of the First Amendment. The Act is entirely void as to such organizations and individuals.

As applied to non-religious organizations, none of the substantive provisions of the Act are found to be unconstitutional.

As applies to plaintiffs, however, and to other persons whose claims for religious exemption from the registration requirements of the Act are challenged by the state, both the cease and desist provision, section 309.534, subd. 1(a), and the criminal penalty provision, section 309.581, constitute prior restraints offensive to the Due Process Clause of the Fourteenth Amendment. The constitutionality of the registration revocation and suspension provision, section 309.532, is not justiciable at this time.

* * *

Wherefore,

IT IS HEREBY RECOMMENDED that the District Court enter an order granting plaintiffs' motion for summary judgment in part and denying it in part and granting defendants' motion for partial summary judgment in part and denying it in part, as follows:

(1) Declaring and adjudging the Minnesota Charitable Solicitations Act, Minn. Stat. §§309.50 *et seq.*, to be unconstitutional as applied to religious organizations and members thereof;

(2) Declaring and adjudging the Act to be constitutional as applied to non-religious organizations and members thereof;

(3) Declaring and adjudging sections 309.534, subd. 1(a), and 309.581 of the Act to be unconstitutional as applied to persons claiming to be religious organizations or members thereof;

(4) Declaring and adjudging the constitutionality of the application of section 309.532 to plaintiffs and others whose claims to a religious exemption are challenged by the state to be a nonjusticiable issue.

(5) Permanently enjoining the Commissioner of Securities from enforcing the Act as to any and all religious organizations;

(6) Permanently enjoining the Commissioner of Securities from utilizing sections 309.534, subd. 1(a), and 309.581 to enforce the Act as against plaintiffs and other persons claiming to be religious organizations or members thereof.

Dated: November 15, 1979.

ROBERT G. RENNER
United States Magistrate

All objections must be filed with the Clerk of Court, Minneapolis, Minnesota, within 10 days of receipt of a copy of the Report and Recommendation.

APPENDIX C1

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA
FOURTH DIVISION

Civil 4-78-453

Pamela Valente, Larry Barber, Larry Haft and Kimberly Korman, and the Holy Spirit Association for the Unification of World Christianity,

Plaintiffs,

vs.

John R. Larson, Commissioner of Securities, Minnesota Department of Commerce; Warren Spannaus, Minnesota Attorney General; individually and in their official capacities,

Defendants.

ORDER

Based upon the May 3, 1979, report and recommendation of the Honorable Robert G. Renner, United States Magistrate, District of Minnesota,

IT IS HEREBY ORDERED that the defendants' motion to dismiss be in all things denied and that the plaintiffs' motion for a preliminary injunction be granted.

Dated: July 5, 1979.

MILES W. LORD
United States District Judge

APPENDIX C2

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA
FOURTH DIVISION

Civil 4-78-453

Pamela Valente, Larry Barber, Larry Haft and Kimberly Korman, and the Holy Spirit Association for the Unification of World Christianity,

Plaintiffs,

vs.

John R. Larson, Commissioner of Securities, Minnesota Department of Commerce; Warren Spannaus, Minnesota Attorney General; individually and in their official capacities,

Defendants.

REPORT AND RECOMMENDATION

The plaintiffs having moved for a preliminary injunction and the defendants having moved for dismissal of the complaint, all motions came on for hearing before the undersigned United States Magistrate Judge on January 25, 1979, pursuant to order of the Honorable Miles W. Lord, Judge of the United States District Court, in accordance with 28 U.S.C. §636(b)(1)(B).

Representing the plaintiffs were Barry A. Fisher, of Beverly Hills, California and Joseph T. Dixon, Jr. of the firm of Henson & Efron, Minneapolis, Minnesota. Appearing in behalf of the defendants were Christine M. Luzzie and Karen Schanfield, Special Assistant Attorneys General, State of Minne-

sota. Americans United for Separation of Church and State appeared through its attorney Robert Nixon in the capacity as *amicus curiae*. An amicus brief has subsequently been received from the Minnesota Council on Foundations. The court, having considered the arguments and briefs as well as the files and records herein, makes the following Report and Recommendation.

I. FACTUAL BACKGROUND

Plaintiff Holy Spirit Association for the Unification of World Christianity, also known as Unification Church (hereinafter the "Church"), is a California non-profit religious corporation. Plaintiffs Larry Haft, Pamela Valente, Larry Barber and Kimberly Korman are members of the Church and followers of its tenets. The Church has been granted tax exempt religious organization status by the United States Internal Revenue Service and the State of Minnesota.

John R. Larson, at the commencement of this lawsuit, was the Commissioner of securities of the State of Minnesota. Warren Spannaus is the Attorney General of the State of Minnesota. As Commissioner of Securities and as Attorney General, respectively, the defendants are responsible for the implementation and enforcement of the Minnesota Charitable Solicitations Act, Minn. Stat. §§309.50-309.61 (1978) (hereinafter the "Act"). Furthermore, by statute and by common law tradition, it is the responsibility of the Attorney General in the State of Minnesota to oversee the handling and application of all funds impressed with a charitable trust.

The Act, originally enacted in 1961, creates a system of registration and disclosure designed to protect the contributing public and charitable beneficiaries against fraudulent practices in the raising of money for purportedly charitable purposes. Under it, a charitable organization must register

with the Minnesota Department of Commerce (hereinafter "Department") prior to soliciting contributions. Minn. Stat. §309.52 (1978). The Act also prohibits fraudulent fund raising practices and requires solicitors to identify themselves to persons solicited.

Prior to 1978, religious organizations were exempted from the registration requirement. However, Minn. Laws 1978, ch. 601, §5, effective March 29, 1978, amended the Act so as to require certain religious organizations to register.

In September 1978, the Church was notified by the Department that it was required to register. The Church thereupon requested a one-month grace period, which request was granted. Nine days later, on October 11, 1978, this action was commenced by the four individual plaintiffs herein to enjoin the Act's enforcement on the ground that it unconstitutionally infringes upon their first Amendment rights of expression and religion. The motion for a preliminary injunction was filed on the same date. The Church itself was subsequently joined as a party plaintiff by stipulation of the parties and order of the court dated January 26, 1979.

When, upon the expiration of the thirty-day grace period, the Church had not registered, the State, by its Attorney General and Commissioner of Securities, the defendants herein, commenced an action to enforce the registration statute in Minnesota state district court.

On November 6, 1978, the defendants moved this court to abstain from deciding the instant case and dismiss it. The state court action has now been stayed by the January 26, 1979 stipulation and order until the federal action has been disposed of.

Section 309.52, subd. 1, of the Act precludes any charitable organization, including non-exempt churches, from soliciting

contributions unless prior thereto it files a registration statement containing the following information:

"(a) Legally established name.

(b) Name or names under which it solicits contributions.

(c) Form of organization.

(d) Date and place of organization.

(e) Address of principal office in this state, or, if none, the name and address of the person having custody of books and records within this state.

(f) Names and addresses of officers, directors, trustees, and chief executive officer.

(g) Federal and state tax exempt status.

(h) Denial at any time by any governmental agency or court of the right to solicit contributions.

(i) Date on which accounting year of the charitable organization ends.

(j) General purposes for which organized.

(k) General purposes for which contributions to be solicited will be used.

(l) Methods by which solicitation will be made.

(m) Copies of contracts between charitable organization and professional fund raisers relating to financial compensation or profit to be derived by the professional fund raisers. Where any such contract is executed after filing of the registration statement, a copy thereof shall be filed within seven days of the date of execution.

(n) Board, group or individual having final discretion as to the distribution and use of contributions received.

(o) The amount of total contributions received during the accounting year last ended.

(p) Such other information as the department may by rule or order require to promote fairness of the solicitation and

to assure full and fair disclosure of all material information to the department."

Section 309.53 requires such organizations to submit annual reports including a financial statement which

> "shall include a balance sheet, statement of income and expense, and statement of functional expenses, shall be consistent with forms furnished by the department, and shall be prepared in accordance with generally accepted accounting principles so as to make a full disclosure of the following, including necessary allocations between each item and the basis of such allocations:
>
> (a) Total receipts and total income from all sources;
>
> (b) Cost of management and general;
>
> (c) Cost of fund raising;
>
> (d) Cost of public education;
>
> (e) Funds or properties transferred out of state, with explanation as to recipient and purpose;
>
> (f) Total net amount disbursed or dedicated within this state, broken down into total amounts disbursed or dedicated for each major purpose, charitable or otherwise;
>
> (g) Names of professional fund raisers used during the accounting year and the financial compensation or profit resulting to each professional fund raiser. Unless otherwise required by this subdivision, the financial statement need not be certified."

Section 309.532, subd. 1, authorizes the state to suspend or revoke any registration if it finds that such action is in the public interest and that the registrant:

"(a) has filed an application for a license or registration which is incomplete in any material respect or contains any statement which, in light of the circumstances under which

to assure full and fair disclosure of all material information to the department."

Section 309.53 requires such organizations to submit annual reports including a financial statement which

> "shall include a balance sheet, statement of income and expense, and statement of functional expenses, shall be consistent with forms furnished by the department, and shall be prepared in accordance with generally accepted accounting principles so as to make a full disclosure of the following, including necessary allocations between each item and the basis of such allocations:
>
> (a) Total receipts and total income from all sources;
>
> (b) Cost of management and general;
>
> (c) Cost of fund raising;
>
> (d) Cost of public education;
>
> (e) Funds or properties transferred out of state, with explanation as to recipient and purpose;
>
> (f) Total net amount disbursed or dedicated within this state, broken down into total amounts disbursed or dedicated for each major purpose, charitable or otherwise;
>
> (g) Names of professional fund raisers used during the accounting year and the financial compensation or profit resulting to each professional fund raiser. Unless otherwise required by this subdivision, the financial statement need not be certified."

Section 309.532, subd. 1, authorizes the state to suspend or revoke any registration if it finds that such action is in the public interest and that the registrant:

"(a) has filed an application for a license or registration which is incomplete in any material respect or contains any statement which, in light of the circumstances under which

it is made, is false or misleading with respect to any material fact;

(b) has engaged in a fraudulent, deceptive or dishonest practice;

(c) is permanently or temporarily enjoined by any court of competent jurisdiction from engaging in or continuing any conduct or practice involving any aspect of charitable solicitations; or

(d) has violated or failed to comply with any provision of this chapter or any rule or order under this chapter."

Section 309.555 requires that registration shall be denied to any charitable organization which expends an unreasonable amount for management and general costs and fund raising costs. It creates a rebuttal presumption that expenditures in excess of 30 percent of total income and revenue are unreasonable.

Section 309.532 further provides:

"Subd. 3. The department may issue an order requiring a licensee or registrant or applicant for a license or registration to show cause why the license or registration should not be revoked or suspended or the application denied. The order shall be calculated to give reasonable notice of the time and place for hearing thereon, and shall state the reasons for the entry of the order. All hearings shall be conducted in accordance with the provisions of chapter 15 [Administrative Procedure Act, Minn. Stat. §15.041 *et seq.* and, in particular §§15.0423 and 16.0424]. After the hearing, the department shall enter an order making such disposition of the matter as the facts require. If the licensee, registrant or applicant fails to appear at a hearing of which he has been duly notified, such person shall be deemed in default, and the proceeding may be

determined against him upon consideration of the order to show cause, the allegations of which may be deemed to be true.

Subd. 4. The hearing may be conducted by a hearing examiner. The examiner shall make proposed findings of fact and submit them to the department. The department shall have the power to compel the attendance of witnesses, to examine them under oath, to require the production of books, papers and other evidence, and to issue subpoenas and cause the same to be served and executed in any part of the state.

Subd. 5. Order of the department shall be subject to judicial review pursuant to chapter 15.

Subd. 6. The commissioner of securities of the department of commerce may promulgate rules of procedure concerning all hearings and other proceedings conducted pursuant to this chapter."

Section 309.533 empowers the Commissioner to investigate possible violations and to demand the attendance of witnesses and production of documents.

Section 309.534, subd. 1, seeks to ensure compliance with the requirements of the Act as follows:

"Whenever it appears to the commissioner that any person has engaged or is about to engage in any act or practice constituting a violation of this chapter or any rule or order hereunder:

(a) He shall have the power to issue and cause to be served upon the person an order requiring him to cease and desist from violations of sections 309.50 to 309.61. The order shall be calculated to give reasonable notice of the rights of the person to request a hearing thereon and shall state the reason for the entry of the order. A

hearing shall be held not later than seven days after the request for the hearing is received by the commissioner after which and within 20 days of the date of the hearing the commissioner shall issue a further order vacating the cease and desist order or making it permanent as the facts require. All hearings shall be conducted in accordance with the provisions of chapter 15. If the person to whom a cease and desist order is issued fails to appear at the hearing after being duly notified, the person shall be deemed in default, and the proceeding may be determined against him upon consideration of the cease and desist order, the allegations of which may be deemed to be true. The commissioner may adopt rules of procedure concerning all proceedings conducted pursuant to this subdivision.

(b) He may bring an action in the district court in the appropriate county to enjoin the acts or practices and to enforce compliance with sections 309.50 to 309.61 or any rule or order thereunder and he may refer the matter to the attorney general to prosecute violations as set forth in sections 309.57 and 309.59."

Section 309.581 provides criminal sanctions for violations.

Section 309.515, subd. 1, exempts those charitable organizations which did not receive contributions in excess of $10,000 in the preceding year, and those religious organizations which received in the preceding year more than half of their contributions from: (1) persons who are members of the religious organization, or (2) from a parent or affiliated organization; or (3) from a combination of the sources listed in (1) and (2). The term "member" excludes those who are granted membership upon making a contribution as a result of a solicitation.

During the 17 years of the Act's existence, more than 1,200 charities have registered. The State has never revoked or suspended a registration but, instead, has obtained injunctions against violation of its substantive prohibitions. The Act has never been judicially interpreted, nor have rules or regulations which might clarify its provisions been issued.

The individual plaintiffs claim to travel throughout the United States proselytising and performing "missionary religious work" on behalf of the Church. They portray themselves as concerned principally with the propagation of their religious, beliefs.

Both prior to an after the 1978 amendments, the plaintiffs have solicited charitable contributions in the State of Minnesota, allegedly in connection with their religious mission. They wish to do so in the future, as in the past, without complying with the registration requirements.

Plaintiffs assert that their fund-raising activities constitute religious expression protected under the First Amendment to the United States Constitution. However, if plaintiffs engage in fund raising without first complying, they would be subject to civil enforcement proceedings and possible criminal prosecution for their failure to comply. Thus, they claim that the Act, both on its face and in its application to them, abridges their exercise of freedom of speech, press and religion, arbitrarily deprives them of their liberty and property without due process of the law; capriciously denies them equal protection of the laws; and is vague, ambiguous and overbroad, all in violation of the First and Fourteenth Amendments of the United States Constitution. They say, therefore, that its enforcement as against them must be enjoined.

The defendants counter that the Act is not unconstitutional and that, in any event, the plaintiffs are not a religious organi-

zation or members thereof and therefore have no standing to raise the issue. They further assert that the court should abstain from accepting jurisdiction because the state courts have not yet had the opportunity to issue an authoritative interpretation of the allegedly unconstitutional provisions.

II. DEFENDANTS' MOTION TO DISMISS

Lack of standing and abstention are the legal bases for the defendants' dismissal motion. Both fail to provide sufficient grounds.

A. *Standing*

Most of the defendants' arguments on the standing issue apply to the individual plaintiffs and are, as a practical matter, mooted by the joinder of the Church itself as a party plaintiff. Nonetheless, the court is convinced that with or without the Church as a named plaintiff there is sufficient standing on the part of the individual plaintiffs.

The defendants allege that the individual plaintiffs do not have a sufficient personal stake in the outcome of this case to invoke the court's jurisdiction in that they do not face a threat of prosecution for violating the Act. *See Baker vs. Carr*, 369 U.S. 186, 82 S.Ct. 691 (1962). They claim that plaintiffs have at no time been threatened with prosecution or even asked to comply. In fact, they point out, the state has never prosecuted anyone under the Act. Thus, they claim, plaintiffs' fear of prosecution is merely hypothetical. Defendants also claim that the possibility of civil enforcement as against these individuals is but slight.

Plaintiffs counter by pointing out that they are members of the Church and hold and follow its religious tenets. They claim that since the Act empowers the State to enjoin their solicitations if the Church does not register, they are real par-

ties in interest, and have sufficient standing to bring this action.

The defendants follow with heavy testimonial barrage against the Church's claim that it is a religion. These depositions are in direct contradiction to evidence in the form of affidavits submitted by the plaintiffs.

Plaintiffs claim that the registration requirements as applied to their Church deprive them of First and Fourteenth Amendment rights. The first part of their claim is that the statute is vague and overbroad.

The traditional rule of standing requires that a person to whom a statute may constitutionally be applied will not be allowed to challenge it on the ground that it might be unconstitutionally applied to others. Where, however, he challenges a statute affecting First Amendment rights as vague and overbroad he will be granted standing even though his own conduct is not privileged and could constitutionally be proscribed by a more concise and narrowly drawn statute. This is because the mere existence of such a law may cause persons not before the court to refrain from exercising their own First Amendment rights. *See Young vs. American Mini Theatres, Inc.*, 427 U.S. 50, 59, 96 S.Ct. 2440, 2447 (1976); *Broadrick vs. Oklahoma*, 413 U.S. 601, 93 S.Ct. 2908 (1973); *Freedman vs. Maryland*, 380 U.S. 51, 56 85 S.Ct. 734 (1965); *International Society for Krishna Consciousness (ISKCON), Inc. vs. Lentini*, 461 F.Supp. 49, 50-51 (E.D.La. 1978); *New York Civil Liberties Union, Inc. vs. Acito*, 459 F.Supp. 75, 81 (S.D.N.Y. 1978); *ISKCON, Inc. vs. Hays*, 438 F.Supp. 1077, 1081 (S.D.Fla. 1977); *ISKCON, Inc. vs. Engelhardt*, 425 F.Supp. 176, 179 (W.D.Mo. 1977).

In the licensing and registration context, this is true whether or not the plaintiff has applied for a license or sought

to register. *Freedman vs. Maryland, supra*; *ISKCON, Inc. vs. Bowen*, 456 F.Supp. 437, 441 (S.D.Ind. 1978); *ISKCON of Berkeley, Inc. vs. Kearnes*, 454 F.Supp. 116, 118 (E.D.Cal. 1978); *ISKCON vs. Engelhardt, supra.*

Plaintiffs herein have made a significant showing, although challenged, regarding their religious motivations. This court is not presently in a position to rule whether the Church is, in fact, a religious organization within the Act, since it has not had an opportunity to adequately measure the credibility of the witnesses who have testified by affidavit and deposition. However, for the purposes of the instant motions, plaintiffs' allegations and present showing are sufficient to sustain their position as a religious organization and members of a religious organization.

In this regard, plaintiffs have several claims which give them a personal stake in the outcome of this litigation. They have claims under the Establishment clause relating to burdens which the Act places on the Church, including restriction of other First Amendment rights, and entanglements it creates. They have claims that their rights of association and privacy as well as their rights of equal protection and due process under the Fourteenth Amendment are violated. *See Association of Data Processing Organizations vs. Camp*, 397 U.S. 150, 154, 90 S.Ct. 827, 830 (1970); *McGowan vs. Maryland*, 366 U.S. 420, 429-430, 81 S.Ct. 1101, 1106-1107 (1961); *School District of Abington Township vs. Schempp*, 374 U.S. 203, 224 n. 9, 83 S.Ct. 1506, 1572 (1963).

There can be no question but that both the Church and the individual plaintiffs have standing to maintain this action.

B. *Abstention*

The defendants, in support of their dismissal motion, also maintain that the state courts should have the opportunity

to rule on claims of the Act's unconstitutionality and that this court should, therefore, abstain under the *Pullman* abstention doctrine from handling the case. *Railroad Commission of Texas vs. Pullman Co.*, 312 U.S. 496, 61 S.Ct. 643 (1941). They point out that since the Act was enacted 17 years ago, over 1,200 charitable organizations have registered under the Act without contest to its validity. They also point out that there is presently pending before the state courts a case involving the same church and issues.

Application of the *Pullman* doctrine is appropriate "'in cases presenting a federal constitutional issue which might be mooted or presented in a different posture by a state court determination of pertinent state law.' *County of Allegheny vs. Frank Masuda Co.*, [360 U.S. 185, 189, 79 S.Ct. 1060 (1959)]." *Colorado River Water Conservation District vs. United States*, 424 U.S. 800, 814, 96 S.Ct. 1236 (1976).

However, abstention is to be regarded with some degree of hesitance where a statute is challenged as facially unconstitutional under the First Amendment. *Procunier vs. Martinez*, 416 U.S. 396, 401-404, 94 S.Ct. 1800, 1805 (1974); *Zwickler vs. Koota*, 389 U.S. 241, 252, 88 S.Ct. 391, 397 (1967); *Sovereign News Co. vs. Falke*, 448 F.Supp. 306, 381-383 (N.D. Ohio 1977).

Moreover, abstention cannot be ordered simply to give state courts the first opportunity to vindicate the federal claim. The role of state courts in determining state law does not diminish the primacy of the federal courts in deciding questions of federal law. This is particularly true where the constitutionality of a state law is attacked as being in variance with First Amendment rights *Steffel vs. Thompson*, 415 U.S. 452, 472-473, 94 S.Ct. 1209, 1222 (1974); *Zwickler vs. Koota, supra*,

389 U.S. at 251, 252; *England vs. Louisiana State Board of Medical Examiners*, 375 U.S. 411, 84 S.Ct. 461 (1964).

Because this case involves federal constitutional claims concerning the Act's facial validity, the court is of the opinion that it may properly exercise its jurisdiction and that abstention would not be appropriate. *See ISKCON, Inc. vs. Hays, supra* at 1081.

III. PLAINTIFFS' MOTION FOR A PRELIMINARY INJUNCTION

The complaint seeks declaratory and injunctive relief pursuant to 42 U.S.C. §1983 and 28 U.S.C. §§2201 & 2202. It asserts that the Act is constitutionally defective because, among other grounds: (1) it vests discretion in officials to suspend or revoke licenses involving the exercise of First Amendment rights without delineating precise and objective standards; (2) its procedures respecting suspensions, revocations and appeals fail to comply with due process; (3) it establishes overly broad investigatory powers to requisition church records and to interrogate church officials and thus entangles the state in Church affairs; (4) it prefers, in its application, certain churches over others; and (5) it infringes upon rights of privacy and association.

Plainly, a preliminary injunction is the appropriate interlocutory remedy to prevent enforcement of a law that is facially inconsistent with the constitution. *Doran vs. Salem Inn, Inc.*, 422 U.S. 922, 931, 95 S.Ct. 2561, 2567 (1975). In the Eighth Circuit, there are two alternative tests which govern the determination of whether such an injunction should issue.

The first is, as stated in *Minnesota Bearing Co. vs. White Motor Corp.*, 470 F.2d 1323, 1326 (8th Cir. 1973), as follows:

"In order to justify the issuance of a preliminary injunc-

tion by the trial court, the movant has the burden of showing:

(1) substantial probability of success at trial by the moving party, and

(2) irreparable injury to the moving party absent such issuance.

Other factors which may be considered in the decision to grant or to deny the request are the absence of substantial harm to other interested parties, and the absence of harm to the public interest."

In *Fennell vs. Butler*, 570 F.2d 263, 264 (8th Cir. 1978), the Court also recognized the second, and alternative, test:

"[A] preliminary injunction should issue

'upon a clear showing of either (1) probable success on the merits and possible irreparable injury, or (2) sufficiently serious questions going to the merits to make them a fair ground for litigation and a balance of hardships tipping decidedly toward the party requesting the preliminary relief.' [citations omitted]"

There can be no doubt that solicitation in connection with the dissemination of information and espousal of religious beliefs is an activity protected by the First Amendment. *Murdock vs. Pennsylvania*, 319 U.S. 105, 109, 111, 63 S.Ct. 870, 873, 874 (1943); *Cantwell vs. Connecticut*, 310 U.S. 296, 304-305, 60 S.Ct. 900, 903-904 (1940); *ISKCON, Inc. vs. Rochford*, 505 F.2d 263, 270 (7th Cir. 1978); *Fernandez vs. Limmer*, 465 F.Supp. 493, 497 (N.D.Tex. 1979); *ISKCON, Inc. vs. Lentini, supra* at 51; *Hall vs. McNamara*, 456 F.Supp. 245, 246 (N.D.Cal. 1978); *ISKCON, Inc. vs. Bowen, supra* at 441; *ISKCON of Berkeley, Inc. vs. Kearnes, supra* at 118; *ISKCON, Inc. vs. Engelhardt, supra* at 179.

Since it is well established that the loss of First Amendment freedoms, even for minimal periods of time, unquestionably constitutes irreparable injury, *Elrod vs. Burns*, 427 U.S. 347, 373, 96 S.Ct. 2673, 2690 (1976); *Swearson vs. Meyers*, 455 F.Supp. 88, 91 (D.Kan. 1978); *ISKCON, Inc. vs. Hays, supra* at 1081; the primary inquiry here must be as to the likelihood that plaintiffs will succeed on the merits.

The court finds that there is a substantial likelihood that plaintiffs will, indeed, succeed on the merits on at least some of its challenges.

A. *Due Process Violations*

The plaintiffs argue that the Act violates their due process rights both because of its vagueness and because of its procedurally deficient imposition of prior restraint on the exercise of First Amendment rights.

The Minnesota Charitable Solicitations Act regulates conduct presumptively entitled to First Amendment protection. It requires registration *before* there can be solicitation. It further provides for revocation and suspension of the right to solicit. Furthermore, since its purpose is the protection of the public from fraudulent solicitations, it is content directed and subject to the strictest standards for application of prior restraints. *See ISKCON of Berkeley, Inc. vs. Kearnes, supra.*

Rules restricting First Amendment expression are inherently suspect, and bear a heavy presumption against their constitutional validity. *Shuttlesworth vs. Birmingham*, 394 U.S. 147, 89 S.Ct. 935 (1969); *Bantom Books vs. Sullivan*, 372 U.S. 58, 83 S.Ct. 631 (1968); *Hall vs. McNamara, supra.* Specific restrictions on First Amendment expression can be justified only by compelling governmental interest which is unachievable by any less restrictive alternative: "The interest advanced must be paramount, one of vital importance, and the

burden is on the government to show the existence of such an interest." *Elrod vs. Burns, supra,* 427 U.S. at 362, 96 S.Ct. at 2684 (1976). *Buckley vs. Valeo,* 424 U.S. 1, 96 S.Ct. 612 (1976); *ISKCON, Inc. vs. Lentini, supra* at 53; *ISKCON, Inc. vs. Bowen, supra* at 443.

To sustain an attack against its constitutionality, a statute which constitutes a prior restraint must seek to restrain only speech which is unprotected and must be designed to filter out those who will engage in protected speech from those who will engage in unprotected speech, restraining only the latter. *ISKCON of Berkeley, Inc. vs. Kearnes, supra* at 119-120. To the extent that protected speech is restricted in the absence of a compelling government interest, a statute must be determined to be unconstitutional.

Under the statute here at issue the Department is empowered to suspend or revoke a registration of it finds "(1) that the order is in the public interest, and (2) that the . . . registrant . . . (a) has filed . . . [a] registration which is incomplete in any material respect or contains any statement which, in light of the circumstances under which it is made, is false or misleading with respect to any material fact", (b) has engaged in a deceptive practice, (c) has been enjoined from soliciting in another jurisdiction; or (d) has failed to comply with "any provision" of the Act. Minn. Stat. §309.532. One registers upon filing a registration statement; thus, registration cannot be denied in the classic sense.

The Department's procedural enforcement alternatives include the following: (1) suspension or revocation of the registration following an administrative show cause hearing under the Administrative Procedure Act (section 309.532 subd. 3); (2) issuance of a cease and desist order to be followed by a hearing within seven days and a final determination within

20 days (section 309.534 subd. 1(a)); or (3) court action seeking a prohibitive temporary restraining order and injunction. Standard judicial review procedures are available under each.

Defendants first argue that no prior restraint is involved because they do not have the power to deny a registration. *See State vs. Wernet*, No. 66894, slip op. at 4 (Minn. Dist. Ct. July 31, 1978).

However, this court sees little difference in a system which allows a state to revoke or suspend a registration immediately after it is filed, or which allows the state to refuse to accept a statement for filing, from one which allows the state to deny the registration in the first instance. It is not the denial of a license *per se*, but rather the effective denial of permission to engage in religious solicitation which can well result in a constitutionally defective prior restraint of an exercise of protected First Amendment rights. *Hynes vs. Mayor of Oradell*, 425 U.S. 610, 622, 96 S.Ct. 1755, 1761 (1976).

Next, the interest asserted by defendants in support of its regulatory scheme is the prevention of fraud, a justification frequently used for registration and licensing laws. This court is aware of the problems of fraudulent solicitations and the state's interest in protecting its citizenry. As the Supreme Court stated in *Cantwell vs. Connecticut, supra*, 310 U.S. at 306, 60 S.Ct. at 904,

> "Without doubt a state may protect its citizens from fraudulent solicitation by requiring a stranger in the community, before permitting him publicly to solicit funds for any purpose, to establish his identity and his authority to act for the cause which he purports to represent."

The State, of course, is free, as always, to punish those who commit fraud, and thus to deter such behavior. The defendants claim, however, that this method of deterrence is a difficult

and inefficient means of protecting the public against the type of fraudulent activity here sought to be circumscribed. Nevertheless, the State's interest in the prevention of fraud cannot be allowed to diminish the strict standards relating to First Amendment protections. *See Hynes vs. Mayor of Oradell, supra.*

In *Schneider vs. State*, 308 U.S. 147, 164, 60 S.Ct. 146 (1939), the Supreme Court answered the plea that traditional law enforcement methods are alone unable to protect its interest, saying:

> "If it is said that these means are less efficient and convenient than bestowal of power on police to decide what information may be disseminated . . ., and who may impart the information, the answer is that considerations of this sort do not empower a municipality to abridge freedom of speech and press." *See also Cantwell vs. Connecticut, supra*; *ISKCON, Inc. vs. Bowen, supra.*

Clearly, the Act cannot survive because it does not meet the due process requirements which the Constitution affords to First Amendment activity. The registration requirements of the Act lack sufficient ascertainable standards and give state officials too much discretion to grant or deny the right to solicit. *See Cantwell vs. Connecticut, supra*; *ISKCON, Inc. vs. Rochford, supra*; *Swearson vs. Meyers, supra.*

1. *Vagueness Challenge.*

When a statute or regulation is challenged under the due process doctrine of vagueness, a court must look at the enactment from two angles: (1) Whether it provides sufficient notice of what may not be done, and (2) whether it contains reasonably clear guidelines so as to prevent official arbitrariness or discrimination in its enforcement. *Smith vs. Goguen*, 415 U.S. 566, 573, 93 S.Ct. 1242 (1974); *Grayned vs. City of Rock-*

ford, 408 U.S. 104, 108, 92 S.Ct. 2294 (1972); *ISKCON, Inc. vs. Rochford, supra* at 267.

Section 309.52, subd. 1(a) to (p), requires an organization wishing to solicit contributions to file a registration statement containing "without limitation" certain specific information about the organization. The Department may by "rule or order" require any other information "to promote fairness of the solicitation and to assure full and fair disclosure of all material information . . . ." Clearly, there is no limit, except by the Department's own determination of "fairness" and "full and fair disclosure" within the scope of the Administrative Procedure Act, to the amount and kind of information which may be required prior to acceptance of the registration statement for filing. Thus, the statute fails to provide notice of what is required for a successful registration.

While the state contends that the Department would not conduct itself in the egregious manner feared by the plaintiffs, it is no answer to an allegation that an enactment is void for vagueness to say that the statute would not be so applied. *Keyishian vs. Board of Regents*, 383 U.S. 589, 599, 87 S.Ct. 675, 681 (1967); *ISKCON, Inc. vs. Rochford, supra* at 270. Whether this section of the Act can pass constitutional muster under current vagueness standards is a question of law serious enough to enjoin its enforcement pending an ultimate determination.

Plaintiffs also legitimately complain of the standards, or lack of them, for suspension or revocation of a registration, in that the Department is allowed to suspend or revoke a registration if it finds that it is "in the public interest" *and* that one of four other criteria is met. Plaintiffs challenge the "public interest" part of the test as well as the "truth" and "fraud" criteria as being vague.

It is well settled that when a regulation subjects the exercise of First Amendment rights to the prior restraint of a license, it must be drawn with narrow, objective, and definite standards to guide the licensing authority. *Shuttlesworth vs. Birmingham, supra*; *ISKCON, Inc. vs. Lentini, supra* at 51; *Hall vs. McNamara, supra* at 247; *Swearson vs. Meyers, supra* at 91. To pass constitutional muster, the standards by which permission is granted or denied must be such as to make the registration process virtually ministerial. *Swearson vs. Meyers, supra*; *Hall vs. McNamara, supra.*

While it may appear at first blush that the criteria for suspension or revocation of a registration are quite objective, such criteria require "an appraisal of facts, the exercise of judgment and the formation of an opinion." *Cantwell vs. Connecticut, supra,* 310 U.S. at 305, 60 S.Ct. at 904. The "truth" test requires the Department to determine whether the registration statement is "incomplete in any material respect" or is "false or misleading with respect to any material fact." Under the "fraud" test, the Department must determine whether any registrant has engaged in a "fraudulent, deceptive or dishonest practice", presumably including representations as to the religious purpose of the solicitations.

If that portion of the statute which designates the kind of information that must be contained in the registration statement is so vague as to be unconstitutional, plainly a truth test encompassing a determination of how complete the statement is must likewise be found to be too vague. *See Hall vs. McNamara, supra* at 246. And, if newspaper publication cannot be enjoined from future publication upon a finding that it constitutes a "public nuisance" by printing "malicious, scandalous and defamatory" articles, clearly outside of the First Amendment ambit, as in *Near vs. Minnesota*, 283 U.S.

697, 51 S.Ct. 625 (1931), then it is certainly also true that a religious organization may not be denied the future exercise of its First Amendment rights simply upon some administrator's finding that it has abused those rights in the past. *See ISKCON of Berkeley, Inc. vs. Kearnes, supra* at 120-121; *Hall vs. McNamara, supra* at 247.

The mere coupling of these vague tests with an even more vague requirement that the Department must determine the suspension or revocation to be "in the public interest" cannot save this section. *See Southeastern Promotions vs. Conrad*, 420 U.S. 546, 553, 95 S.Ct. 1239, 1244 (1975).

Section 309.534, regarding cease and desist orders, is also attacked. Plaintiffs point out that this section not only carries forth the questionable features of the previously discussed sections but also contains objectionable features uniquely its own in that it allows the Commissioner to issue a cease and desist order not only upon a finding that a person has engaged in unlawful activity but also upon a finding that a person *is about to* do so.

Thus, it runs headlong into the thicket which was the subject of Judge Peckham's concern in *ISKCON of Berkeley, Inc. vs. Kearnes, supra* at 122, that:

> "The problem of prediction is the key to the doctrine of prior restraint. For example, prior restraints are permissible to a limited extent in obscenity cases because one knows the content of the speech before it takes place. In most instances, however, one cannot know precisely what activity an individual will pursue, and thus any system which conditions the right to speak upon a finding of whether or not the individual is likely to engage in protected speech generally will involve a significant margin of error such that some persons will be wrongfully re-

> strained from exercising their constitutional rights, while others are permitted to engage in proscribed activity. Within this margin or error, the officials administering the system will have latitude to exercise their judgment and discretion. Necessarily, the possibility of censorship is introduced and First Amendment guarantees threatened."

Plaintiffs' concerns with the scope of the Department's investigatory powers (section 309.533) also appear to be well founded. *See Hall vs. McNamara, supra* at 247.

2. *Procedural Challenge*

Even assuming the Minnesota Act could survive the challenges of vagueness, there is also the due process question regarding the procedures to be used in imposing the prior restraints.

The Act may well be within the proscription of *Freedman vs. Maryland, supra*, and its progeny:

> "Licensing arrangements which impinge upon the free exercise of First Amendment rights must provide strict procedural safeguards . . . absence of these safeguards [means] that the registrations were facially unconstitutional." *ISKCON vs. Rochford, supra* at 271.

In *Freedman*, it was held that a process which requires the prior submission of a film to a censor avoids constitutional infirmity only if it takes place under standards designed to obviate the dangers of a censorship system: (1) The burden of proving that the film is unprotected expression must rest on the censor; (2) the exhibitor must be assured, by statute or authoritative judicial construction, that the censor will, within a specified brief period, either issue a license or go to court to restrain showing of the film; (3) any restraint imposed in advance of a final judicial determination on the

merits must similarly be limited to preservation of the status quo for the shortest fixed period compatible with sound judicial resolution; and (4) the procedure must assure a prompt final judicial decision.

The constitutional policy underlying *Freedman* is even more compelling when the subject matter of dissemination concerns religious practice. *ISKCON of Western Pennsylvania, Inc. vs. Griffin*, 437 F.Supp. 666, 670 (W.D.Pa. 1977).

Plaintiffs fault the notice and hearing provisions of section 309.534 regarding cease and desist orders. They complain that, while the department has the power under section 309.534(1)(b) to seek court approval of penalties, it does not have to proceed under (1)(b), but may issue a cease and desist order under section 309.534(1)(a); that the order takes effect immediately upon service; that only an administrative hearing is required; and that there is no requirement that the State bear the burden of justifying its initial and continued suppression of presumptively protected speech.

The challenged review procedures are essentially those of the Minnesota Administrative Procedure Act (APA), Minn. Stat. §15.041-15.052 (1978), used by most state agencies to resolve contested proceedings.

Defendants concede that administrative decisions made under the APA, whether under the Charitable Solicitations Act or any other regulatory statute, may, on some occasions, affect protected First Amendment rights. They say, however, that the vast majority of decisions have no relationship to such rights, and that to require all such contested proceedings to be initiated in court to be decided within a specified period, simply because an agency decision may one day have First Amendment implications, will unduly burden the courts and negate the use of the Administrative Procedures Act.

Furthermore, defendants seriously question the extent to which the Act directly impinges on free speech. They claim that the purpose and intent of the statute is to provide a comprehensive program for supervision of charities which solicit from the public, that there is no regulation of content, and that there are no abusive restrictions of an organization's ability to solicit. They also argue that, in both the cease and desist and the revocation provisions of the challenged Act, the Department must obtain judicial enforcement of its order and must show, based upon the record, the decision to be proper.

The plaintiffs admit that some procedural safeguards are present; they question only whether these procedures satisfy due process standards.

This court has serious doubts as to whether they do. First, the fact that the review procedures for cases involving First Amendment rights are no different than those involving non-preferred rights and privileges bears ominously upon arguments that the special *Freedman*-like protections are present. Indeed, no specific recognition is made in either the Charitable Solicitations Act or the Administrative Procedure Act of the possibility that special procedural safeguards might in some cases be needed.

Second, the Act nowhere states upon whom the burden of proof rests regarding a showing that the conduct sought to be regulated is not protected by the First Amendment. While authoritative judicial interpretation may well eliminate this problem in the future, this does not help the defendants' case for the nonce.

Third, there is no specific assurance in the statute that a registration statement must be accepted for filing if it is deemed "incomplete" by the Department. Thus, solicitation could well be effectively blocked for an indefinite period.

Fourth, here the status quo is the activity of charitable solicitation. The Act empowers the Department to impose a prior restraint directed not at preserving the status quo but at destroying it. This, too, is an apparent violation of the *Freedman* standards.

Finally, the promptness of the review procedures may also be insufficient. For example, a cease and desist order may be in operation for seven days prior to an administrative hearing. After that as much as twenty days may be lost during the decision making process, following which judicial review may proceed at an undetermined pace. While stays are allowed during appeals from suspensions or revocations of registration, if suspension or revocation is not the action sought by the Department through its cease and desist order, there is no provision to protect on-going solicitations.

While the court does not now decide that these provisions are constitutionally infirm, it finds that the plaintiffs have raised serious questions which must be resolved before the Act can be enforced.

B. *Establishment Clause Violations*

Plaintiffs also complain that the exemptions as contained in section 309.515 facially discriminate against their religion in violation of the Establishment Clause of the First Amendment. Section 309.515(b) exempts from registration:

> "A religious society or organization which received more than half of the contributions it received in the accounting year last ended (1) from persons who are members of the organization; or (2) from a parent organization or affiliated organization; or from a combination of the sources listed in clauses (1) and (2) . . ."

The defendants argue that, because the challenged statute governs charitable solicitations generally, it could not be inter-

preted in such a manner as to aid one religion over another. While the defendants admit that the statute distinguishes between exempt and non-exempt churches, they seek to justify the distinction on grounds that there is a rational basis for differentiation.

It is the defendants' position that the membership criterion is valid because a regular church member is likely to have access to financial information and be generally aware of how his money is spent by the church. On the other hand, they contend, a religious organization which solicits from the public at large is not similarly answerable or accountable to its contributors.

It is well settled that a state may not aid, foster or promote one religion over another, nor may it be hostile to a particular religion. *Epperson vs. Arkansas*, 393 U.S. 97, 89 S.Ct. 266 (1968). In *Lemon vs. Kurtzman*, 403 U.S. 602, 91 S.Ct. 2105 (1971), the Supreme Court set forth a three-pronged test for determining whether government conduct constitutes an Establishment Clause violation:

> "Every analysis in this area must begin with consideration of the cumulative criteria developed by the court over many years. Three such tests may be gleaned from our cases. First, the statute must have a secular legislative purpose; second, its principal or primary effect must be one that neither enhances nor inhibits religion, *Board of Education vs. Allen*, 392 U.S. 236, 243, 88 S.Ct. 1923, 1926 (1968); finally, the statute must not foster 'an excessive government entanglement with religion' *Walz* [*vs. Tax Commission*, 397 U.S. 664, 674, 90 S.Ct. 1409, 1414 (1970)]." *Lemon vs. Kurtzman, supra*, 403 U.S. at 612-613, 91 S.Ct. at 2111.

A statute which violates any of these three tests violates the First Amendment. *ISKCON, Inc. vs. Hays, supra.*

As to the second criterion, plaintiffs correctly point out that the exemptions of §309.515 do not apply to all groups which rely on members for support, nor does it withdraw from exemption all groups which solicit from the public at large. The Act arbitrarily mandates that in order to be exempted 50% of contributions must come from "members".

Members of the public who contribute to a church which solicits 49% of its contributions from the public have no more contact with it, nor is that church any more answerable to them, than if the church solicited 51% of its contributions from the public. Yet, in both instances, good faith solicitors, as well as the public, have the same interest to be protected by the State. Clearly, whatever its legislative purpose, the Act has the immediate effect of subjecting some churches to far more rigorous requirements than others.

The burden which the exemption lifts from the churches that qualify and which the statute imposes on those that do not, is onerous, indeed. The statute subjects them not only to filing a detailed registration statement, but also to filing an even more detailed annual report, including a financial statement involving comprehensive financial disclosure, to submitting to extensive state investigation, possible injunction or state receivership, and to holding open to public inspection all books and records. The effect of this is to severely inhibit plaintiffs' religious activities.

The entanglement criterion also poses serious doubts as to the Acts' validity. For example, as to plaintiffs challenges to section 309.52(1)(a)-(p), the required information regarding the collection, management, use, and dispersal of the solicited funds, as well as "such other information as the depart-

ment may . . . require . . . to assure disclosure of all material information . . ." connotes the State's deep and intricate involvement in monitoring detailed facets of a church's economy.

It is doubtful whether a religious organization can be compelled to explain the source and use of its revenues absent a showing of compelling need achievable by no adequate alternative. *Fernandez vs. Limmer, supra* at 504-505, and cases cited therein.

The perforced church-state intimacy pervades other challenged sections. Section 309.533(1)(a) gives the licensing official discretion to investigate the activities of a soliciting church based only on his determination that an investigation is "necessary". Limitations on his investigatory powers, or standards and guidelines for the exercise of those powers, are missing. As the court noted in *McCormick vs. Hirsch*, 460 F. Supp. 1337, 1355 (M.D.Pa. 1978),

> "The reach of the investigatory powers into the financial affairs of a church obviously create[s] the potential for breach of religious liberty."

The Act requires continuing, detailed scrutiny of churches and thrusts the State into close examination of the inner workings of religious institutions compelled to respond. In order to ensure that solicitations are used for permitted purposes the State must determine whether the moneys have been spent for religious or non-religious purposes. Minn. Stat. §309.555. To do this requires the State to evaluate religious practices and to engage in "the kind of involvement with the church entity that will simply not be tolerated." *McCormick vs. Hirsch, supra* at 1352. As the Supreme Court recently explained:

> "It is not only the conclusions that may be reached . . . which may impinge on the rights guaranteed by the Religion Clauses, but the very process of inquiry leading to findings and conclusions." *NLRB vs. The Catholic Bishop*

of Chicago, —— U.S. ——, 47 U.S.L.W. 4283, 4285 (March 21, 1979)

This court can only conclude that the plaintiffs have made a significant showing regarding the Act's inconsistency with the Establishment Clause.

C. *Free Exercise, Privacy and Association Rights Violations*

The plaintiffs also contend that the disclosure and investigation provisions of the Act violate their rights of free exercise of religion, freedom of association, and privacy.

In order to determine whether a statute is violative of the Free Exercise Clause the court must employ the three step analysis utilized in *Wisconsin vs. Yoder*, 406 U.S. 205, 92 S.Ct. 1526 (1972). First, the court must determine whether or not a legitimate religious belief is held by the plaintiffs and whether the activity affected by the statute is pervasively religious. Second, the court must inquire as to whether the statute places a burden or inhibition upon the plaintiffs' free exercise rights. Finally, assuming an affirmative answer to the first two inquiries, the court must decide if the burden is justified by a compelling state interest. *McCormick vs. Hirsch, supra* at 1351.

The court applies this mode of analysis to the facts of the instant case as follows:

First, as previously pointed out, plaintiffs have made a sufficient showing that their activity is pervasively religious and that the Church is the embodiment of a legitimate religious belief.

Second, as has also been previously noted, they have shown that the Act places a significant burden on the Church's free exercise rights.

Finally, they have shown that the State's interest in protecting the public from fraud, while certainly legitimate and reasonable, is not sufficiently compelling to sustain the constitutionality of the burden imposed, because "in this highly sensitive constitutional area [o]nly the gravest abuses, endangering paramount interests, give occasion for permissible limitations". *Sherbert vs. Verner*, 374 U.S. 398, 83 S.Ct. 1790 (1963), as cited in *McCormick vs. Hirsch, supra* at 1356.

Moreover, as the court pointed out in *Fernandez vs. Limmer, supra* at 504-505,

> "No church . . . should be compelled to bear itself of its membership lists and explain the source and use of each dollar without a showing of compelling need achievable by no adequate alternative. Unless such a need is established for disclosure . . . the potential for chilling effect on donors, members, and those who associate with the Society and deal with it financially is great, as is the impact on the churches' privacy. The rights of association and financial privacy are too great to be easily brushed aside [citations omitted]".

Plainly, there are serious questions as to whether the Act violates plaintiffs rights of free exercise of religion, privacy and freedom of association.

CONCLUSION

This court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§1331 and 1343. The plaintiffs, and each of them, have a significant stake in the outcome of this case and, therefore, have standing to sue. Application of the *Pullman* abstention doctrine would be inappropriate.

The issue before the court at this time is not, strictly speaking, the constitutionality of the Minnesota Charitable Solicitations Act, but rather whether or not the plaintiffs have made a sufficient showing to justify an injunction against its en-

forcement as to them. The court is convinced that the Act, and several of its provisions, is probably unconstitutional on its face as respects its regulation of religious organizations. The court has enumerated several of its concerns over what it feels may be its more flagant and serious constitutional impediments. However, this is not to demean plaintiffs' arguments as to its other constitutional claims, nor is it to say that plaintiffs must ultimately prevail on each and every challenge asserted.

It is not this court's function at this stage to set forth a detailed accounting of each and every offensive word or phrase in the statute. That task is preserved for a later time. Nor does the court reach the question of whether or not, if plaintiff Church is ultimately determined to be a non-religious entity, it may come within the scope of legitimate regulation of non-religious charitable organizations.

It is the court's view, nevertheless, that the core provisions of the 1978 amendments to the Act, those which seek to apply its terms to religious organizations, are unlikely to be found constitutional. For the time being, therefore, the plaintiffs should be permitted to continue their solicitations without threat of restraint or sanction imposed by the State under the Act.

Wherefore,

IT IS HEREBY RECOMMENDED that the defendants' motion to dismiss be in all things denied and that the plaintiffs' motion for a preliminary injunction be granted.

Dated: May 3, 1979.

ROBERT G. RENER
United States Magistrate

All objections must be filed with the Clerk of Court, Minneapolis, Minnesota, within 10 days of receipt of a copy of Report and Recommendation.

APPENDIX D

JUDGMENT
UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

No. 80-1131
September Term, 1980

Pamela Valente, et al,

Appellees,

vs.

John R. Larson, etc., et al,

Appellants.

No. 80-1159
Pamela Valente, et al,

Appellants,

vs.

John R. Larson, etc., et al,

Appellees.

APPEALS FROM the United States District Court for the District of Minnesota.

THIS CAUSES came on to be heard on the original designated record of the United States District Court for the District of Minnesota and briefs of the respective parties and were argued by counsel.

ON CONSIDERATION WHEREOF, it is now here ordered and adjudged by this Court, that the judgment of the said District Court, in these causes be, and the same are hereby, vacated in accordance with the opinion of this Court.

And it is further ordered by this Court that these causes be, and they are hereby, remanded for entry of a modified injunction and further proceedings consistent with this opinion.

January 7, 1981

APPENDIX E

UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

No. 80-1131
No. 80-1159

Pamela Valente, Larry Barber, Larry Heft, Kimberly Korman, and Holy Spirit Association for the Unification of World Christianity,

Appellees/Cross-Appellants,

vs.

John R. Larson, Commissioner of Securities, Minnesota Department of Commerce; Warren Spannaus, Minnesota Attorney General; Individually and in Their Official Capacities,

Appellants/Cross-Appellees.

NOTICE OF APPEAL TO THE SUPREME COURT OF THE UNITED STATES

Notice is hereby given that John R. Larson and Warren Spannaus, the above named appellants/cross-appellees, hereby appeal to the Supreme Court of the United States from the final judgment of the United States Court of Appeals for the Eighth Circuit filed and entered on January 7, 1981 vacating

and remanding the judgment of the United States District Court for the District of Minnesota filed on January 21, 1981.

This appeal is taken pursuant to 28 U.S.C. § 1254(2).

Dated: March 20, 1981.

STATE OF MINNESOTA
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Cross-Appellees

APPENDIX F

CHAPTER 309
SOCIAL AND CHARITABLE ORGANIZATIONS

309.50 Solicitation of charitable funds; definitions.
309.515 Exemptions.
309.52 Registration requirement.
309.53 Annual report.
309.531 Licensing of professional fund raisers; bond required.
309.532 Denial, suspension and revocation of licenses.
309.533 Investigations; proceedings.
309.534 Cease and desist orders; injunctions; receivers.
309.54 Public record.
309.55 Use of names.

309.555 Limitations on charitable expenditures.
309.556 Public disclosure requirements.
309.56 Service of process.
309.57 District court jurisdiction.
309.58 Violations; witnesses; testimony.
309.581 Violations; penalties.
309.582 Consultants.
309.59 Construction; powers of attorney general.
309.591 Rule making power.
309.60 Reciprocal agreements, other states.
309.61 Severability.
309.62 Uniform management of institutional funds act; definitions.
309.63 Appropriation of appreciation.
309.64 Rule of construction.
309.65 Investment authority.
309.66 Delegation of investment management.
309.67 Standard of conduct.
309.68 Release of restrictions on use or investment.
309.69 Severability.
309.70 Uniformity of application and construction.
309.71 Citation.

NOTE: For definitions, see section 300.02.

309.50 SOLICITATION OF CHARITABLE FUNDS; DEFINITIONS.

Subdivision 1. As used in sections 309.50 to 309.61 the words, terms and phrases, defined in this section have the meanings given them.

Subd. 2. "Person" means any individual, organization, group, firm, copartnership, association, partnership, corporation, company, trust or joint stock association, church, religious sect, religious denomination, society, or league, and in-

cludes any trustee, receiver, assignee, agent or other similar representative thereof.

Subd. 3. "Charitable purpose" means any charitable, benevolent, philanthropic, patriotic, religious, social service, welfare, educational, eleemosynary, cultural, artistic, or public interest purpose, either actual or purported.

Subd. 4. "Charitable organization" means any person who engages in or purports to engage in solicitation for a charitable purpose and includes a chapter, branch, area office or similar affiliate or any person soliciting contributions within the state for a parent charitable organization, but does not include an organization whose primary purpose is supporting or opposing any candidate for elective office, or influencing the nomination for election or the election of any candidate for elective office.

Subd. 5. "Contribution" means the promise or grant of any money or property of any kind or value, including the promise to pay, or payment for merchandise or rights of any other description when representation is made by or on behalf of the seller or solicitor that the whole or any part of the price will be applied to a charitable purpose. "Contributions" shall not include any funds obtained by a charitable organization through grants from any governmental agency. "Contributions" shall include, in the case of a charitable organization offering goods and services to the public, the difference between the direct cost of the goods and services to the charitable organization and the price at which the charitable organization or any person acting on its behalf resells those goods or services to the public.

Subd. 6. "Professional fund raiser" means any person who for financial compensation or profit participates in public solicitation in this state of contributions for, or on behalf of

any charitable organization. A bona fide officer or employee of a charitable organization is not a professional fund raiser unless his salary or other compensation is computed on the basis of funds to be raised, or actually raised.

Subd. 6a. "Accounting year" means the 12 month period on which a charitable organization keeps its financial records.

Subd. 7 [Repealed, 1969 c 112 s 17]

Subd. 8. "Department" means the securities and real estate division of the department of commerce.

Subd. 9. "Parent organization" is that part of a charitable organization which coordinates, supervises or exercises control over policy, fund-raising, and expenditures, or assists or advises one or more chapters, branches or affiliates in the state.

Subd. 10. "Solicit" and "solicitation" mean the request directly or indirectly for any contribution, regardless of which party initiates communication, on the plea or representation that such contribution will or may be used for any charitable purpose, and include any of the following methods of securing contributions:

(1) Oral or written request;

(2) The distribtuion, circulation, mailing, posting, or publishing of any handbill, written advertisement, or publication;

(3) The making of any announcement to the press, over the radio, by television, by telephone, or telegraph concerning an appeal, assemblage, athletic or sports event, bazaar, benefit, campaign, contest, dance, drive, entertainment, exhibition, exposition, party, performance, picnic, sale, or social gathering, which the public is requested to patronize or to which the public is requested to make a contribution;

(4) The sale of, offer, or attempt to sell, any advertisement, advertising space, book, card, magazine, merchandise,

subscription, ticket of admission, or any other thing, or the use of the name of any charitable person in any offer or sale as an inducement or reason for purchasing any such item, or the making of any statement in connection with any such sale, that the whole or any part of the proceeds from any such sale will be used for any charitable purpose. A "solicitation" shall be deemed completed when made, whether or not the person making the same receives any contribution or makes any such sale.

Subd. 11. "Management and general costs" means costs determined to be management and general by generally accepted accounting principles.

Subd. 12. "Fund raising costs" means costs determined to be fund raising by generally accepted accounting principles.

309.515 EXEMPTIONS.

Subdivision 1. Subject to the provisions of subdivisions 2 and 3, sections 309.52 and 309.53 shall not apply to any of the following:

(a) Charitable organizations:

(1) which did not receive total contributions in excess of $10,000 from the public within or without this state during the accounting year last ended, and.

(2) which do not plan to receive total contributions in excess of such amount from the public within or without this state during any accounting year, and

(3) whose functions and activities, including fund raising, are performed wholly by persons who are unpaid for their services, and

(4) none of whose assets or income inure to the benefit of or are paid to any officer.

For purposes of this chapter, a charitable organization shall be deemed to receive in addition to such contributions as are

solicited from the public by it, such contributions as are solicited from the public by any other person and transferred to it. Any organization constituted for a charitable purpose receiving an allocation from a community chest, united fund or similar organization shall be deemed to have solicited that allocation from the public.

(b) A religious society or organization which received more than half of the contributions it received in the accounting year last ended (1) from persons who are members of the organization; or (2) from a parent organization or affiliated organization; or (3) from a combination of the sources listed in clauses (1) and (2). A religious society or organization which solicits from its religious affiliates who are qualified under this subdivision and who are represented in a body or convention is exempt from the requirements of sections 309.52 and 309.53. The term "member" shall not include those persons who are granted a membership upon making a contribution as a result of a solicitation.

(c) Any educational institution which is under the general supervision of the state board of education, the state university board, the state board for community colleges, or the university of Minnesota or any educational institution which is accredited by the university of Minnesota or the North Central association of colleges and secondary schools, or by any other national or regional accrediting association.

(d) A fraternal, patriotic, social, educational, alumni, professional, trade or learned society which limits solicitation of contributions to persons who have a right to vote as a member. The term "member" shall not include those persons who are granted a membership upon making a contribution as the result of a solicitation.

(e) A charitable organization soliciting contributions for any person specified by name at the time of the solicitation if all of the contributions received are transferred to the person named with no restrictions on his expenditure of it and with no deductions whatsoever.

(f) A private foundation, as defined in section 509(a) of the Internal Revenue Code of 1954, which did not solicit contributions from more than 100 persons during the accounting year last ended.

Subd. 2. Where any such group or association or person soliciting for the benefit of such group or association described in subdivision 1, clauses (a), (b) and (d), employs a professional fund raiser to solicit or assist in the solicitation of contributions, sections 309.52 and 309.53 shall apply and such group or association or person shall file a registration statement as provided in section 309.52 and an annual report as provided in section 309.53.

Subd. 3. The department may, by written order or regulation, suspend or wholly revoke the exempt status of any charitable organization or any group of charitable organizations exempted by this section or may require, prior to a solicitation by a charitable organization exempt by the provisions hereof, such information with respect thereto as the department may deem necessary to protect the public interest.

309.52 REGISTRATION REQUIREMENT.

Subdivision 1. No charitable organization, except as otherwise provided in section 309.515, shall solicit contributions from persons in this state by any means whatsoever unless, prior to any solicitation, there shall be on file with the department upon forms provided by the department, a registration statement containing, without limitation, the following information:

(a) Legally established name.

(b) Name or names under which it solicits contributions.

(c) Form of organization.

(d) Date and place of organization.

(e) Address of principal office in this state, or, if none, the name and address of the person having custody of books and records within this state.

(f) Names and addresses of officers, directors, trustees, and chief executive officer.

(g) Federal and state tax exempt status.

(h) Denial at any time by any governmental agency or court of the right to solicit contributions.

(i) Date on which accounting year of the charitable organization ends.

(j) General purposes for which organized.

(k) General purposes for which contributions to be solicited will be used.

(l) Methods by which solicitation will be made.

(m) Copies of contracts between charitable organization and professional fund raisers relating to financial compensation or profit to be derived by the professional fund raisers. Where any such contract is executed after filing of the registration statement, a copy thereof shall be filed within seven days of the date of execution.

(n) Board, group or individual having final discretion as to the distribution and use of contributions received.

(o) The amount of total contributions received during the accounting year last ended.

(p) Such other information as the department may by rule or order require to promote fairness of the solicitation and to assure full and fair disclosure of all material information to the department.

Subd. 1a. A charitable organization whose total contributions received during any accounting year are in excess of $10,000 shall file a registration statement with the department within 30 days after the date on which the organization's total contributions exceeded $10,000. The registration shall exist unless revoked by a court of competent jurisdiction, or the department, or as provided in subdivision 7. This subdivision shall not apply to a charitable organization which had filed a registration statement pursuant to this section for the accounting year last ended or to organizations described in section 309.515, subdivision 1.

Subd. 2. The first registration statement filed by a charitable organization shall include a financial statement of its operation for its most recent 12 months period immediately preceding the filing of the first registration statement.

Subd. 3. The registration statement shall be executed by any two duly constituted officers of the charitable organization who shall acknowledge that it was executed pursuant to resolution of the board of directors or trustees, or if there be no such board, then by its managing group which has approved the content of the registration statement, and shall certify that the board of directors or trustees, or if there be no such board, its managing group, have assumed, and will continue to assume responsibility for determining matters of policy and have supervised, and will continue to supervise the finances of the charitable organization.

Subd. 4. Where any chapter, branch, area office or similar affiliate of a charitable organization is supervised and controlled by a parent organization located within or outside the state, the affiliate may file a registration statement on behalf of the parent organization in addition to or as part of its own

registration statement, or the parent organization may file a registration statement on behalf of the affiliate in addition to or as part of its own registration statement.

Subd. 7. In no event shall the registration of a charitable organization continue in effect after the date such organization should have filed, but has failed to file an annual report in accordance with the requirements of section 309.53, and such organization, if in default under such section, shall not be eligible to file a new registration statement until it shall have filed the required annual report with the department.

309.53 ANNUAL REPORT.

Subdivision 1. Except as otherwise provided in subdivision 1a of this section, every charitable organization required to file a registration statement pursuant to section 309.52 shall file an annual report with the department of commerce upon forms provided by the department or on forms identical thereto on or before June 30 of each year if its books are kept on a calendar year basis, or within six months after the close of its fiscal year if its books are kept on a fiscal year basis. For cause shown the department may extend the time for filing the annual report for a period not to exceed three months.

Subd. 1a. A charitable organization may, but need not, file an annual report pursuant to this section if the organization:

(a) Did not receive total contributions in excess of $10,000 from the public within or without this state during the accounting year last ended.

(b) Does not plan to receive total contributions in excess of $10,000 from the public within or without this state during any accounting year, and

(c) Does not employ a professional fund raiser.

Subd. 2. Such annual report shall include a financial statement covering the immediately preceding 12 months period of operation, and shall be executed by any two duly constituted officers of the charitable organization, who shall acknowledge that it was executed pursuant to resolution of the board of directors or trustees, or if there be no such board, then by its managing group which has approved the content of the annual report.

Subd. 3. The financial statement shall include a balance sheet, statement of income and expense, and statement of functional expenses, shall be consistent with forms furnished by the department, and shall be prepared in accordance with generally accepted accounting principles so as to make a full disclosure of the following, including necessary allocations between each item and the basis of such allocations:

(a) Total receipts and total income from all sources;

(b) Cost of management and general;

(c) Cost of fund raising;

(d) Cost of public education;

(e) Funds or properties transferred out of state, with explanation as to recipient and purpose;

(f) Total net amount disbursed or dedicated within this state, broken down into total amounts disbursed or dedicated for each major purpose, charitable or otherwise;

(g) Names of professional fund raisers used during the accounting year and the financial compensation or profit resulting to each professional fund raiser. Unless otherwise required by this subdivision, the financial statement need not be certified.

A financial statement of a charitable organization which has solicited from the public within or outside this state total contributions in excess of $25,000 for the 12 months of opera-

tion covered by the statement shall be accompanied by an opinion signed by a certified public accountant that such statement fairly represents the financial operations of the charitable organization in sufficient detail to permit public evaluation of its operations. In giving such opinion the certified public accountant shall take into consideration capital, endowment or other reserve funds, if any, controlled by the charitable organization. The opinion need not conform to the wording of the opinion form of the annual report forms provided by the department.

Subd. 4. Where a registration statement has been filed by a parent organization or affiliate as provided in section 309.52, subdivision 4, the registered parent organization may file the annual report required under this section on behalf of the chapter, branch, area office, similar affiliate or person in addition to or as part of its own report or the registered affiliate may file the annual report required under this section on behalf of the parent organization in addition to or as part of its own report. The accounting information required under this section shall be set forth separately and not in consolidated form with respect to every chapter, branch, area office, similar affiliate or person within the state which raises or expends more than $10,000. The department of commerce may permit any chapter, branch, area office, similar affiliate or person to file a consolidated statement with any other chapter, branch, area office, similar affiliate or person or parent organization if the attorney general determines that the interests of the charitable beneficiaries will not be prejudiced thereby and that separate accounting information is not required for proper supervision.

309.531 LICENSING OF PROFESSIONAL FUND RAISERS; BOND REQUIRED.

Subdivision 1. No person shall act as a professional fund raiser unless licensed by the department. Applications for a license shall be in writing, under oath, in the form prescribed by the department and shall be accompanied by an application fee of $25. Each license shall be effective for a period of not more than 12 months from the date of issuance, and in any event shall expire on July 30 next following the date of issuance.

Subd. 2. The department shall have the power, in connection with any application for license as a professional fund raiser, to require the applicant to file a surety bond in such amount, not exceeding $20,000, and containing such terms and conditions as the department determines are necessary and appropriate for the protection of the public. The applicant may deposit cash in and with a depository acceptable to the department in such amount and in such a manner as may be prescribed and approved by the department in lieu of the bond.

Subd. 3. No professional fund raiser shall solicit in the name of or in behalf of any charitable organization unless such solicitor has written authorization from two officers of such organization, a copy of which shall be filed with the department. Such written authorization shall bear the signature of the solicitor and shall expressly state on its face the period for which it is valid, which shall not exceed one year from the date issued.

Subd. 4. The department may require that any licensed professional fund raiser submit financial reports, not more frequently than quarterly, in such form and containing such information as the department by rule or order requires.

309.532 DENIAL, SUSPENSION AND REVOCATION OF LICENSES.

Subdivision 1. The department may by order deny any application, suspend or revoke any license or registration, or may censure a licensee or registrant if it finds (1) that the order is in the public interest, and (2) that the applicant, registrant or licensee:

(a) has filed an application for a license or registration which is incomplete in any material respect or contains any statement which, in light of the circumstances under which it is made, is false or misleading with respect to any material fact;

(b) has engaged in a fraudulent, deceptive or dishonest practice;

(c) is permanently or temporarily enjoined by any court of competent jurisdiction from engaging in or continuing any conduct or practice involving any aspect of charitable solicitations; or

(d) has violated or failed to comply with any provision of this chapter or any rule or order under this chapter.

Subd. 2. The commissioner of securities and real estate of the department of commerce may promulgate rules and regulations further specifying and defining those actions and omissions which constitute fraudulent, deceptive or dishonest practices, and establishing standards of conduct for professional fund raisers.

Subd. 3. The department may issue an order requiring a licensee or registrant or applicant for a license or registration to show cause why the license or registration should not be revoked or suspended or the application denied. The order shall be calculated to give reasonable notice of the time and place for hearing thereon, and shall state the reasons for the

entry of the order. All hearings shall be conducted in accordance with the provisions of chapter 15. After the hearing, the department shall enter an order making such disposition of the matter as the facts require. If the licensee, registrant or applicant fails to appear at a hearing of which he has been duly notified, such person shall be deemed in default, and the proceeding may be determined against him upon consideration of the order to show cause, the allegations of which may be deemed to be true.

Subd. 4. The hearing may be conducted by a hearing examiner. The examiner shall make proposed findings of fact and submit them to the department. The department shall have the power to compel the attendance of witnesses, to examine them under oath, to require the production of books, papers and other evidence, and to issue subpoenas and cause the same to be served and executed in any part of the state.

Subd. 5. Orders of the department shall be subject to judicial review pursuant to chapter 15.

Subd. 6. The commissioner of securities and real estate of the department of commerce may promulgate rules of procedure concerning all hearings and other proceedings conducted pursuant to this chapter.

309.533 INVESTIGATIONS; PROCEEDINGS.

Subdivision 1. The commissioner in his discretion:

(a) may make public or private investigations within or outside the state as he deems necessary to determine whether any person has violated or is about to violate any provision of sections 309.50 to 309.61 or any rule or order thereunder, or to aid in the enforcement of sections 309.50 to 309.61 in the prescribing of rules and forms thereunder, and may publish

information, concerning the violation of sections 309.50 to 309.61 or any rule or order thereunder.

(b) may require or permit any person to file a statement in writing, under oath or otherwise as the commissioner determines, as to all facts and circumstances concerning the matter being investigated.

Subd. 2. For the purpose of any investigation or proceeding under sections 309.50 to 309.61, the commissioner or any person designated by him may administer oaths and affirmations, subpoena witnesses and compel their attendance, take evidence and require the production of any books, papers, correspondence, memoranda, agreements or other documents or records which the commissioner deems relevant or material to the inquiry.

Subd. 3. No person is excused from attending and testifying or from producing any document or record before the commissioner, in obedience to the subpoena of the commissioner or any person designated by him in any proceedings instituted by the commissioner, on the ground that the testimony or evidence required of him may tend to incriminate him or subject him to a penalty or forfeiture, but no individual may be prosecuted or subjected to any penalty or forfeiture for an account of any transaction, matter or thing concerning which he is compelled, after claiming his privilege against self incrimination, to testify or produce evidence, except that the individual testifying is not exempt from prosecution and punishment for perjury or contempt committed in testifying.

Subd. 4. In case of contumacy by, or refusal to obey a subpoena to, any person, the district court, upon application by the commissioner, may issue to the person an order directing him to appear before the commissioner or the officer designated by him, there to produce documentary evidence if so

ordered or to give evidence touching the matter under investigation or in question. Failure to obey the order of the court may be punished by the court as a contempt of court.

309.534 CEASE AND DESIST ORDERS; INJUNCTIONS; RECEIVERS.

Subdivision 1. Whenever it appears to the commissioner that any person has engaged or is about to engage in any act or practice constituting a violation of this chapter or any rule or order hereunder:

(a) He shall have the power to issue and cause to be served upon the person an order requiring him to cease and desist from violations of sections 309.50 to 309.61. The order shall be calculated to give reasonable notice of the rights of the person to request a hearing thereon and shall state the reason for the entry of the order. A hearing shall be held not later than seven days after the request for the hearing is received by the commissioner after which and within 20 days of the date of the hearing the commissioner shall issue a further order vacating the cease and desist order or making it permanent as the facts require. All hearings shall be conducted in accordance with the provisions of chapter 15. If the person to whom a cease and desist order is issued fails to appear at the hearing after being duly notified, the person shall be deemed in default, and the proceeding may be determined against him upon consideration of the cease and desist order, the allegations of which may be deemed to be true. The commissioner may adopt rules of procedure concerning all proceedings conducted pursuant to this subdivision.

(b) He may bring an action in the district court in the appropriate county to enjoin the acts or practices and to enforce compliance with sections 309.50 to 309.61 or any rule

or order thereunder and he may refer the matter to the attorney general. This section shall in no way alter the authority of the attorney general to prosecute violations as set forth in sections 309.57 and 309.59. Upon a proper showing, a permanent or temporary injunction, restraining order or writ of mandamus shall be granted and a receiver may be appointed for the defendant or the defendant's assets. The court may not require the commissioner to post a bond.

Subd. 2. In any proceeding under the provisions of sections 309.50 to 309.61 in relation to injunction or receivership, the same may be brought on for hearing and disposition upon an order to show cause returnable upon not more than eight days notice to the defendant therein. The cases shall have precedence over other cases upon the court calendar, and shall not be continued without the consent of the state, except upon good cause shown to the court, and then only for the reasonable length of time necessary in the opinion of the court to protect the rights of the defendant party.

309.54 PUBLIC RECORD.

Subdivision 1. Registration statements, annual reports, and other documents required to be filed shall become public records in the office of the department.

Subd. 2. Every person subject to sections 309.50 to 309.61 shall maintain accurate and detailed books and records to provide the information required by sections 309.50 to 309.61. All such books and records shall be open to inspection at all reasonable times by the department or by the attorney general.

Subd. 3. Every charitable organization which is required to file an annual report under section 309.53 shall keep and maintain within Minnesota, at the place designated in its registration statement, the original books and records, or true copies thereof, pertaining to all money or other property col-

lected from residents of this state and to the disbursement of such money or property. Such books and records shall be preserved for a period of not less than 10 years from the date of preparation thereof.

309.55 USE OF NAMES.

Subdivision 1. No charitable organization or person acting for a charitable organization shall use the name of any other person (except that of an officer, director or trustee of the charitable organization by or for which contributions are being solicited) in public solicitation literature without the written consent of such other person. Nothing herein contained shall prevent the publication of names of contributors, without their written consent, in an annual or other periodic report issued by a charitable organization for the purpose of reporting to its membership. Nothing in sections 309.52 or 309.53 shall require the disclosure in any registration statement or annual report of the names of individual contributors and the amount contributed by each one individually.

Subd. 2. No charitable organization soliciting contributions shall use a name, symbol or statement so closely related or similar to that used by another charitable organization or governmental agency that the use thereof would tend to confuse or mislead the public.

Subd. 3. Registration under sections 309.50 to 309.61 shall not be deemed to constitute an endorsement by the state of Minnesota of the charitable organizations so registered, and no person shall directly or indirectly misrepresent the registration hereunder to any donor or prospective donor.

Subd. 4. No charitable organization and no person acting on behalf of a charitable organization shall use any uniformed personnel of any local, state or federal agency or department

to solicit contributions. This subdivision shall not apply to firefighters who solicit contributions in uniform.

Subd. 5. No charitable organization and no person acting on behalf of a charitable organization shall use or employ any fraud, false pretense, false promise, misrepresentation, misleading statement, misleading name, mark or identification, or deceptive practice, method or device, with the intent that others should rely thereon in connection with any charitable solicitation, including any such actions or omissions designed to confuse or mislead a person to believe that such organization is another organization having the same or like purposes; or to believe that the funds being solicited are or will be used for purposes and programs conducted within or for persons located within the state of Minnesota when such is not the case; or to otherwise present purposes and uses of the funds which are not as provided within the purposes and uses filed upon registration of said organization under this chapter, or if no such registration has been filed, then as provided under the exemption of said organization from federal and state income taxes as an organization formed and operating for charitable purposes as defined herein.

Subd. 6. No person shall, either in his own right or as agent, officer or employee of a charitable organization sell or otherwise furnish for a consideration to any other person any list of contributors.

Subd. 7. No moneys solicited within the state by any organization subject to this chapter shall be paid or contributed by the soliciting organization to any other charitable organization not registered under this chapter by which it is controlled or with which it is affiliated by contract, franchise or otherwise, whose purposes, policies, articles or bylaws are in conflict with those of the soliciting organization upon any

material matter unless such other organization to which such moneys are to be paid or delivered shall agree to be bound by the purposes, policies, articles and bylaws of the soliciting organization.

309.555 LIMITATIONS ON CHARITABLE EXPENDITURES.

Subdivision 1a. Any charitable organization which is required to register pursuant to section 309.52 and which expends or agrees to expend an unreasonable amount for management and general costs and fund raising costs shall not be eligible to maintain registration with the department. An amount expended or agreed to be expended by a charitable organization for management and general costs and fund raising costs in excess of 30 percent of total income and revenue is presumed to be an unreasonable amount. An amount expended or agreed to be expended by a charitable organization for management and general costs and fund raising costs of 30 percent or less of total income and revenue may be challenged as unreasonable by the department or the attorney general. Any expenditures made in violation of this provision shall be recoverable from the charitable organization by the attorney general.

Subd. 1b. Any professional fund raiser who receives or agrees to receive an unreasonable amount for management and general costs and fund raising costs shall not be eligible to maintain a license with the department. An amount received or agreed to be received by a professional fund raiser for management and general costs and fund raising costs in excess of 30 percent of the total contributions raised or received by reason of any solicitation activities is an unreasonable amount. An amount received or agreed to be received by a professional

fund raiser for management and general costs and fund raising costs of 30 percent or less of the total contribution raised or received by reason of any solicitation activities may be challenged as unreasonable by the department or the attorney general. Any expenditures made in violation of this provision shall be recoverable by the attorney general from the charitable organization or professional fund raiser or both.

Subd. 2. In the event that goods or services are provided to the public in connection with charitable solicitation, no charitable organization or professional fund raiser shall expend or agree to expend an unreasonable amount for management and general costs and fund raising costs, which is presumed to be an amount in excess of 30 percent of the difference between the cost to the charitable organization of all goods and services sold and the amount for which said goods and services are sold.

Subd. 3. Expenditures made or agreed to be made for management and general costs or fund raising costs shall include payments made or agreed to be made to professional fund raisers as compensation for services or reimbursement for expenses, or both. A charitable organization shall be deemed to have expended or agreed to expend any portion of contributions retained by the professional fund raiser pursuant to a contract with the charitable organization. Expenditures made or agreed to be made for management and general costs or fund raising costs shall also include payments made or agreed to be made to employees of the charitable organization and other persons.

Subd. 4. No person shall use the name of a charitable organization for financial compensation or profit unless the charitable organization has consented to the use of its name in a contract with the person. The contract shall:

(a) be in writing, and a copy thereof shall be filed with the department within seven days of the date of execution;

(b) disclose the amount of financial compensation or profit to be retained by the person;

(c) disclose the percentage of the total gross amount of moneys, funds, pledges or other property raised or received or to be raised or received in connection with the use of the name of the charitable organization which will be given to the charitable organization.

Subd. 5. In an action brought by the department or the attorney general pursuant to sections 309.532 or 309.57, a charitable organization may interpose as a defense to a violation of this section that fund raising costs and management and general costs in excess of 30 percent are reasonable because of extenuating or mitigating circumstances.

309.556 PUBLIC DISCLOSURE REQUIREMENTS.

In connection with any charitable solicitation, the following information shall be clearly disclosed:

(a) The name, address and telephone number of each charitable organization on behalf of which the solicitation is made;

(b) The percentage of the contribution which may be deducted as a charitable contribution under both federal and state income tax laws.

If the solicitation is made by direct contact, the required information shall be disclosed prominently on a card which shall be exhibited to the person solicited. If the solicitation is made by radio, television, letter, telephone or any other means not involving direct personal contact, the required information shall be clearly disclosed in the solicitation.

309.56 SERVICE OF PROCESS.

Subdivision 1. Any charitable organization or professional fund raiser which solicits contributions in this state, but does not maintain an office within the state shall be subject to service of process, as follows:

(a) By service thereof on its registered agent within the state, or if there be no such registered agent, then upon the person who has been designated in the registration statement as having custody of books and records within this state; where service is effected upon the person so designated in the registration statement a copy of the process shall, in addition, be mailed to the charitable organization or professional fund raiser at its last known address;

(b) When a charitable organization or professional fund raiser has solicited contributions in this state, but maintains no office within the state, has no registered agent within the state, and no designated person having custody of its books and records within the state, or when a registered agent or person having custody of its books and records within the state cannot be found as shown by the return of the sheriff of the county in which such registered agent or person having custody of books and records has been represented by the charitable organization or professional fund raiser as maintaining an office, service may be made by leaving a copy of the process in the office of the commissioner. Service upon the commissioner is not effective unless (a) the plaintiff, who may be the commissioner in a suit, action, or proceeding instituted by him, forthwith sends notice of the service and a copy of the process by certified mail to the defendant or respondent at his last known address or takes other steps which are reasonably calculated to give actual notice, and (b) the plaintiff's

affidavit of compliance with this subdivision is filed in the case on or before the return day of the process, if any, or within a further time the court allows.

Subd. 2. The solicitation of any contribution within this state shall be deemed to be the agreement of the charitable organization or professional fund raiser that any process against it which is so served in accordance with the provisions of this section shall be of the same legal force and effect as if served personally within this state.

309.57 DISTRICT COURT JURISDICTION.

Upon the application of the attorney general the district court is vested with jurisdiction to restrain and enjoin violations of sections 309.50 to 309.61.

309.58 VIOLATIONS; WITNESSES; TESTIMONY.

Whenever the department or the attorney general has reason to believe that a violation of sections 309.50 to 309.61 has been committed or may be committed by a charitable organization or professional fund raiser, or its officers, directors, trustees, agents or servants, either the department or the attorney general may request information relevant to the provisions of sections 309.50 to 309.61 from such charitable organization or professional fund raiser. If, in the opinion of the department or the attorney general, such charitable organization or professional fund raiser, through its managing group, fails to furnish the information requested, or fails to satisfy the department or the attorney general that the charitable organization or professional fund raiser or its officers, directors, trustees, agents or servant do not have or cannot acquire the information requested, the registration statement of such charitable organization or the license of the professional fund

raiser may be suspended, revoked or censured by the department in accordance with the provisions of section 309.532.

309.581 VIOLATIONS; PENALTIES.

Any person who wilfully and knowingly violates any provision of sections 309.50 to 309.61, or who wilfully and knowingly gives false information to the department or attorney general in statements, reports or contracts required to be filed with the department by sections 309.50 to 309.61 shall be guilty of a misdemeanor.

309.582 CONSULTANTS.

The attorney general may retain as consultants such accountants or other experts as the administration of this chapter may require.

309.583 [Repealed, 1976 c 2 s 124]

309.59 CONSTRUCTION; POWERS OF ATTORNEY GENERAL.

Sections 309.50 to 309.61 shall not be construed to limit or to restrict the exercise of the powers or the performance of the duties of the attorney general which he otherwise is authorized to exercise or perform under any other provision of law.

309.591 RULE MAKING POWER.

The commissioner of securities and real estate of the department of commerce may promulgate such rules as are reasonably necessary to carry out and make effective the provisions and purposes of this chapter.

309.60 RECIPROCAL AGREEMENTS, OTHER STATES.

The department may enter into reciprocal agreements with a like authority of any other state or states for the purpose of exchanging information made available to the department or to such other like authority.

309.61 SEVERABILITY.

If any provision of sections 309.50 to 309.61 or the application thereof to any person or circumstance is held invalid the invalidity shall not affect other provisions or application of said sections which can be given effect without the invalid provision or application, and to this end the provisions of said sections are severable.

Office-Supreme Court, U.S.
FILED
JUL 18 1981
ALEXANDER L. STEVAS,

No. 80-1666

IN THE

Supreme Court of the United States

October Term, 1980

JOHN R. LARSON, Commissioner of Securities, Minnesota Department of Commerce; WARREN SPANNAUS, Minnesota Attorney General; Individually and in their official capacities,

Appellants,

vs.

PAMELA VALENTE, LARRY BARBER, LARRY HAFT, KIMBERLY KORMAN, and HOLY SPIRIT ASSOCIATION FOR THE UNIFICATION OF WORLD CHRISTIANITY,

Appellees.

JOINT APPENDIX

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PROBABLE JURISDICTION NOTED JUNE 1, 1981

APPEAL DOCKETED APRIL 3, 1981

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APPENDIX

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

PAMELA VALENTE, et al.,

vs.

JOHN R. LARSON, et al.

DOCKET ENTRIES

10-11-78—Complaint—summons issued

10-12-78—Pltfs' Declaration of Larry Haft

10-17-78—Summons—served 10-16-78

10-18-78—Order to Show Cause (Lord, J) returnable 12-7-73 at 10:00 a.m.

11-6-78—Notice and Motion to Dismiss, or in the Alternative, to join the Holy Spirit Association for the Unification of World Christianity as a Party by Defendants on 12-7-78 at 10:00, together with affidavit of Susan E. Fortney

2-9-79—Order (Mag. Renner) amending Complaint

5-3-79—Magistrate Robert G. Renner's Report and Recommendation that the defendants' motion to dismiss be in all things denied and that the plaintiffs' motion for a preliminary injunction be granted
Mailed copy of above to counsel

7-5-79—Order (Lord, J) that the defendants' motion to dismiss be in all things denied and that the plaintiffs' motion for a preliminary injunction be granted

7-25-79—Pltfs' Notice and Motion for Summary Judgment, Ret. 8-30-79 at 10:00 a.m.

8-13-79—Defts' Notice and Motion for Partial Summary Judgment, Ret. 8-30-79 at 10:00 a.m.
Affidavit of Susan E. Fortney

11-15-79—Report and Recommendation (Mag. Renner) as follows: That the District Court enter an order granting plaintiffs' motion for summary judgment in part and denying it in part and granting defendants' motion for partial summary judgment in part and denying it in part

1-21-80—Order (Lord, J) that pltfs' motion for summary judgment is granted in part and denied in part, and defts' motion for partial summary judgment is granted in part and denied in part (Dated 1-19-80)

2-19-80—Defts' Notice of Appeal as to Judge Lord's Order dated 1-19-80

3-3-80—Pltfs' Notice of Cross-Appeal as to Judge Lord's Order dated 1-19-80

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

PAMELA VALENTE, LARRY BARBER, LARRY HAFT and KIMBERLY KORMAN,

Plaintiffs,

vs.

JOHN R. LARSON, Commissioner of Securities, Minnesota Department of Commerce; WARREN SPANNUS, [sic] Minnesota Attorney General; individually and in their official capacities,

Defendants.

COMPLAINT FOR INJUNCTION AND DECLARATORY JUDGMENT

I

INTRODUCTION

1. This is a civil rights suit for declaratory and injunctive relief pursuant to 42 U.S.C. §1983 and 28 U.S.C. §§2201-02,

brought by four individual followers of the tenets of the Unification Church, to enjoin enforcement of the Minnesota solicitation licensing and reporting law, Minnesota Statutes Sections 309.50, et seq. The law is unconstitutional both on its face and as construed and applied to the distribution of religious tracts and the solicitation of funds to support the Plaintiffs' Church on the public sidewalks, parks and other public places in Minnesota. The law at issue is defective because it vests discretion in officials to deny or revoke licenses for the exercise of First Amendment rights, without narrow, precise, and objective standards to govern such discretion; because it lacks due process procedures respecting denials, revocations and appeals; because it vests public officers with vast, overbroad, and discretionary investigatory powers to requisition Church books and records and interrogate Church officials; and because it unequally applies to Churches. Plaintiffs seek temporary and permanent injunctive relief so that they may proceed with their proselytizing and fundraising which is the very mainstay and lifeblood of their religious movement.

II

JURISDICTION

2. The jurisdiction of this Court is invoked under 28 U.S.C. §1331 (federal question) and 1343 (304) (civil rights). The matter in controversy exceeds $10,000 exclusive of interest and costs.

III

PARTIES

Plaintiffs

3. PAMELA VALENTE, aged 33, LARRY BARBER, aged 25, LARRY HAFT, aged 28, and KIMBERLY KORMAN, aged 23, have been believers of the doctrines expressed

in the *Divine Principle*, and have followed the tenets of the Unification Church for 2 years 10 months, 2 years 10 months, 2 years 6 months and 3 years, respectively. They travel from place to place throughout the United States performing religious and missionary work in public places, and wish to continue doing so, including in public streets and parks of the State of Minnesota.

Defendants

4. JOHN R. LARSON is the Commissioner of Securities, Minnesota Department of Commerce. He is charged with the implementation and enforcement of Minnesota Statutes §§309.50, et seq., including, through his subordinates, the investigation of organizations seeking to solicit in Minnesota and the issuance of cease and desist orders under the challenged sections.

5. WARREN SPANNUS [sic] is the Minnesota Attorney General, and is charged with the enforcement of criminal provisions of the Minnesota statutes under challenge in the present case, including, through his subordinates, the prosecution of those charged with their violation.

6. LARSON and SPANNUS [sic] are sued individually and in their official capacities. The acts and practices of the Defendants and their agents, as herein alleged, are performed under color of law, and therefore, constitute actions of the state within the meaning of the Fourteenth Amendment to the United States Constitution.

IV

FACTS

7. Plaintiffs seek to distribute tracts and solicit contributions to support their Church in appropriate public places throughout the State of Minnesota. This conduct is regulated by Minnesota Statutes Sections 309.50, et seq., which re-

quire registration, detailed financial reporting, and permit exhaustive official investigation. Should they engage in their sought activity without complying with these statutes, Plaintiffs would be subject to civil injunction, civil and criminal contempt penalties, and criminal prosecution.

8. Minnesota Statutes Sections 309.50, et seq., on their face, substantively and procedurally abridge the exercise of freedom of speech, press, and religion; arbitrarily deprive persons of their liberty and property without due process of law; capriciously deny the equal protection of the laws; and are vague, ambiguous, and overbroad, all in violation of the First and Fourteenth Amendments of the United States Constitution.

9. Vagueness and Overbreadth. The ordinance lacks precise, objective, and narrowly pinpointed standards controlling the Commissioner's exercise of discretion to effectively deny or revoke permits, or as to what or how excessively to investigate. The investigatory powers to review all books and records of a Church are constitutionally overbroad, and entangles the State in the affairs of Plaintiffs' Church. Finally, the statute imposes unjustified restrictions on fund raising by religious organizations.

10. Equal Protection. The application of the statutes to itinerant missionaries whose Churches are not established in Minnesota, but not to Churches with substantial local membership, constitutes an unequal application of the law.

V

EQUITY AND IRREPARABLE INJURY

11. There is between the parties an actual controversary as hereinbefore set forth. The Plaintiffs are suffering irreparable injury and are threatened with irreparable harm in the future by reason of the acts herein complained of and a

substantial loss or impairment of freedom of expression has occurred and will continue to occur so long as Defendants' conduct continues. Plaintiffs will be harassed and intimidated by Defendants or their agents utilizing the ordinance at issue, so long as they continue to proselytize in Minnesota. Furthermore, the chilling effect upon the exercise of First Amendment rights may derive from the fact of threats of prosecution unaffected by the prospects of its success or failure.

12. Plaintiffs have no plain, adequate or complete remedy to speedily redress the wrongs herein complained of other than this action. Any other remedy to which Plaintiffs could be remitted would be attended by such uncertainties and delays as to deny substantial relief, involve a multiplicity of suits, and cause further irreparable injury, damage and inconvenience to the Plaintiffs and is not adequate to protect them from the continuing police conduct and the chilling effect it has upon the exercise of Plaintiffs' constitutional rights.

VI

RELIEF

WHEREFORE, Plaintiffs pray that this Court:

1. Declare that Minnesota Statutes Sections 309.50, et seq., are, on their face and as construed and applied to the distribution of Plaintiffs' religious literature and solicitation of funds by members of a religious organization, abridge the free exercise of religion and the freedoms of speech and press, contrary to the First and Fourteenth Amendments to the United States Constitution;
2. Temporarily and permanently enjoin the Defendants from arresting or prosecuting Plaintiffs under the aforementioned provisions; and

3. Grant Plaintiffs attorneys' fees, costs, and such other and further relief as may be equitable and just.

DATED: October 3, 1978

Respectfully submitted,
BARRY A. FISHER and
HENSON & ELFRON
BY: BARRY A. FISHER
Attorneys for Plaintiffs

(Caption)

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

PLAINTIFFS' DECLARATION OF LARRY HAFT

LARRY HAFT declares as follows:

1. I am 28 years old, a Plaintiff herein, and for 2-1/2 years have been a believer in the religious principles set out in the *Divine Principle* and as expressed by the Unification Church. I and my co-Plaintiffs travel from place to place throughout the United States performing Unification Church proselytizing and missionary religious work, including on the public sidewalks and other such public places throughout the State of Minnesota.

2. The Unification Church is most controversial and has been subject to contempt and scorn throughout the United States, including Minnesota. The need for confidentiality of identity of donors, suppliers, recipients of funds, membership and associates, is great to protect them from attack and derision and the resultant chilling effect on their willingness to continue their association with members of the Church, including myself and my co-Plaintiffs, as well as association with the Church itself.

3. Founded in 1954, the Unification Church is established in 120 cities throughout the United States. The Church em-

phasizes evangelical missionary engagements and sponsors religious rallies, workshops, retreats, and lectures. Included is door-to-door and public-place proselytizing and solicitation of funds to support the Church.

4-5. I and my co-Plaintiffs seek to distribute tracts and solicit contributions to support our Church in Minnesota public places. I understand this conduct is controlled by Minn. Stat. 309.50, et seq., as amended in 1978. Neither I, my co-Plaintiffs, nor the Unification Church has complied with that statute. To engage in solicitations without compliance subjects us to prosecution and other enforcement by Defendant Attorney General SPANNUS [sic]. We believe the statute to be unconstitutional and I and my co-Plaintiffs will totally forebear from engaging in solicitations to comply with the law pending the determination by this Court.

6. The Unification Church was founded May 1, 1954 in Seoul, Korea by the Reverend Sun Myung Moon. Over a long course of prayer, meditation and study, Reverend Moon discovered a series of principles which yielded great insight into the deep questions of human life and faith; the nature of God, the origin of suffering, the purpose of creation and life. These series of revelations later became known as the Divine Principle; the Church doctrine. The sole purpose of the Unification Church is to bear witness to this revelation and to lay a foundation for the return of Christ and the Kingdom of God on Earth.

7. Essentially, the Divine Principle teaches God originally created Man to grow and develop his character and nature to be one with God's, thus achieving the highest obtainable spiritual accomplishment of all, becoming a direct Child of God. In such a world, all the ideals of God would have been realized and God, Man and All Things would have existed as

one. However, due to the fall away from God by the first human ancestors, Adam and Eve, the ideal world of creation has never been realized and it has been God's grief and Man's suffering that all descendents thereafter have been unable to know the true love of God their Father. Through the Fall, Man became crippled in heart and sinfulness was introduced into Man's blood and character. God, being a God of love and forgiveness, has been working behind the scenes of human history to bring His children back to their rightful original position. God has been working to restore Man to his original position with the same laws and principles by which He created Man. Thus the course of human history has been the course of recreation or restoration. These patterns can be traced not only through the Old Testament, but through the last 2,000 years as well. Jesus came as the Second Adam and began the greatest spiritual awakening of all times. He promised to return again at which time the consummation of God's dispensation on Earth will be achieved. The Lord of the Second Advent, in the position of the Third Adamic figure, will set the pattern by which all fallen men can restore and cleanse themselves of original sin. The Divine Principle goes on to teach that the time of His return is imminent and that a new age, one of hope for both God and Man, is dawning in our very midst.

8. Since its inception, the Church has established itself in all 50 states and over 120 cities throughout the United States. Approximately 35,000 associate members work outside the Church, while 7,000 core members carry out the major projects initiated by the Church.

9. At the Centers, such as here in Minnesota the members study the practical application of the Church's religious beliefs and engage in and carry out the Center and state pro-

grams, all subject to the rules, disciplines and principles of the Church. The majority of members who live at the various Centers devote all of their time to Church activities and have no unrelated employment. The balance of those living in the Centers are students or have outside jobs, but devote all of their free time to the Church.

10. Life within the Center calls for a schedule which approximates the following: an early morning prayer service, breakfast, a session of studying The Divine Principle and related subjects, several hours of witnessing, proselytizing and fund raising, literature distribution, dinner, lectures (which are open to the public), a discussion group and an evening prayer service.

11. Religious worship is conducted in daily prayer sessions and in regular formal Sunday morning and evening and Wednesday sermons and readings from the Old and New Testaments and The Divine Principle. The Church also conducts a special 5:00 a.m. ceremonial pledge service each Sunday and a monthly prayer service at a designated holy place.

12. The Church celebrates four religious holidays or festivals: God's Day, Parent's Day, Children's Day and World Day, in addition to the traditional Christian holidays.

13. As a means of spreading our theology, the Church sponsors religious rallies, weekend workshops, training workshops and retreats, lectures and seminars, encourages fellowship and has initiated college campus societies for the study and research of The Divine Principle.

14. A significant portion of the Church's activity has been devoted to carrying on religious and evangelical tours throughout the United States. From 1972 until 1974, the Unification Church conducted an annual "Day of Hope Tour" which

served as the primary vehicle through which Rev. Moon conveyed the Church's religious message. Initiated as a 7 city tour in 1972, the Day of Hope Tour visited 21 cities in the United States in 1973 and 40 cities in 1974. The Church also conducted a separate 10 city "Celebration of Life" evangelical crusade in 1974. In addition to the national evengelical tours, the Church conducts regional (known as the "International One World Crusade") and state ("One World Crusade") religious crusades on a year-round basis. These crusades include speaking engagements, religious rallies, worship services, workshops, lectures and seminars. In 1976 the Unification Church sponsored religious rallies in honor of the bicentennial at Yankee Stadium in New York on June 1, 1976 and at the Washington Monument in Washington, D.C. on September 18, 1976.

15. Other programs inspired by the Church include: The America the Beautiful Cleanup Campaign for local neighborhoods on the East Coast, The War on Pornography which began in various cities to fight the rise of pornographic seepage, The D.C. Striders, a highly successful and accomplished track club made up of inner-city youth. Hundreds of these otherwise disadvantaged youth have received college scholarships totaling millions of dollars and some have gone on to win world records and Olympic medals. The Unification Theological Seminary was founded in Barrytown, New York in 1975. It offers a Masters in Religious Education graduate program and has a current enrollment of 110 students.

16. In addition to the activities described above, the Church conducts formal seminars and training programs at its international training centers in New York State. Seminars are held for three, seven, twenty-one, forty and one hundred and twenty days, with the longer sessions being reserved for

more advanced and intensive religious study. Instruction is based on The Divine Principle and related works. Positions of spiritual responsibility and more advanced instruction for the training of teachers and leaders are available for those who have successfully completed the basic seminars. We regard each of our members as potential future leaders and the training they receive is geared to their moral, civic and spiritual development.

17. Church members proselytize and engage in public evangelism throughout the United States, including witnessing, both on the street and house-to-house, literature distribution, public lectures and speaking engagements, fund raising and hospital and retirement home visitation.

18. In recent years, the Unification Church and Reverend Moon have received notoriety by both press and governmental agencies. Included have been irresponsible charges of brainwashing, mind control and of occultism. Although no evidence of wrongdoing has been proven, substantial damage of reputation has been done.

19. Such reports have stirred great concern among many parents who have grown children in our organization. In order to have them forceably removed, some have hired professional kidnappers, deprogrammers and deprogramming organizations to assault, verbally abuse, intimidate and confuse the young converts into recanting their religious beliefs. In many cases, church members who have returned from this dehumanizing experience, have told of being refused sleep, food and mental rest. Wendy Helander, a church member who suffered kidnapping multiple times, had her religious freedom reinstated in *Helander v. Salonen*, —— D.C. —— (D.C. Super. Ct. 1975)—attached, where the Court rejected charges that the Church engaged in coercive means:

"In consideration of the entire record of these proceedings, the Court finds:

(1) That the evidence of record fails to establish petitioners' claim that respondents have employed impermissible means, such as techniques akin to hypnosis or a systematized program of thought control utilizing fatigue and deprivation of food, as a part of an effort to gain and retain the adherence of Miss Helander to their religion;

(2) That the evidence of record is insufficient to establish the application by respondents to Miss Helander of any techniques substantially different from those which are used by other religious organizations for purposes of converting or proselytizing;

(3) That the evidence of record fails to establish that Miss Helander has been within the District of Columbia at any time after March 3, 1975 . . . . The Court concludes, therefore, that the evidence of record is insufficient to establish that Miss Helander is or has been committed, detained, confined, or restrained from her lawful liberty by respondents, and is insufficient also to establish that she is under the control of respondents to a degree which obligates them to produce her person for a hearing upon the return of the writ of habeas corpus."

See, also Katz v. Superior Ct., 141 Cal. Rptr. 234 —— Cal.App. —— (1977)

20. As a member of the Minnesota based Unification Church, I can assure the Court that our members solicit with the greatest respect and consideration for the privacy and well being of local citizens. The members have been instructed at all times to be orderly, courteous, not to interfere with passersby, and that for no reasons are they to harass, annoy or bother anyone.

21. It is our belief and practice that by loving the people with the true Heart of God, our mission as builders of the New Kingdom, can be actualized in our lifetime. The loss of the right to express our religious freedoms in Minnesota has been felt by our Church in a very painful way. We believe that the salvation for America and the World lies in the message Reverend Moon has to offer. Especially here in America where the major focus of our mission is presently underway, the loss of time, and what is even worse, the inability to freely converse with the people of Minnesota and to accept their support in our work, has been greatly felt by our constituency. The Church has taught us to take personal responsibility for the spiritual lives of our fellow Americans, and we sincerely believe the work of Reverend Moon has the Blessing of God and the hope for mankind.

22. Unless the Defendants are enjoined and prevented from further denials of our religious freedom, those freedoms secured for us by our ancestors, may be lost and forgotten forever.

I declare, under penalty of perjury, the foregoing is true and correct.

Executed this 11th day of October, 1978 at Minneapolis, Minnesota.

/s/ Larry Haft
LARRY HAFT

(Caption)

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

STIPULATION

WHEREAS, the defendants in this action have moved to dismiss this action pursuant, *inter alia* to the doctrine of *Younger*

vs. Harris, 401 U.S. 37 (1971), or, in the alternative, to join the Holy Spirit Association for the Unification of World Christianity, Inc., a California nonprofit religious corporation (hereinafter, the "Unification Church"), as a party, pursuant to Rules 17 and 19, Fed. R. Civ. Proc.; and

WHEREAS, an action entitled State of Minnesota, by its Attorney General, Warren Spannaus, and Commissioner of Securities, John R. Larson vs. Holy Spirit Association for the Unification of World Christianity, File No. 4311272 (hereinafter, the "state action") is presently pending in the District Court of the State of Minnesota for the Second Judicial District; and

WHEREAS, the Unification Church intends to raise, without necessary limitation, the same or similar substantive constitutional issues by way of defense in the state action as are or could be raised affirmatively by the plaintiffs in this action; and

WHEREAS, the defendants in this action do not dispute the right of the plaintiff to raise their federal claims in this Court; and

WHEREAS, the parties hereto wish to avoid potentially duplicative proceedings in the federal and state courts; and

WHEREAS, the parties wish to avoid further litigation concerning the doubtful, disputed, and complex issues of law presented by defendants' motion to dismiss and/or join parties,

NOW, THEREFORE,

IT IS HEREBY STIPULATED AND AGREED, by and between the parties hereto and the Unification Church, as follows:

1. The Unification Church shall be joined as a party plaintiff to this action;

2. The defendants and/or the State of Minnesota shall cause to stay the state action, during the pendency of this action in the federal court;

3. No further action of any kind shall be taken by any party in the state action during the pendency of this action in the federal court, except those actions described in paragraph 2 hereof, or except as may otherwise be ordered by this Court;

4. If this Court elects to retain jurisdiction in this case, defendants shall file a counterclaim herein against the Unification Church which raises the identical cause(s) of actions as are presently raised in the state action and which shall become part of this federal action. Neither the plaintiffs hereto nor the Unification Church shall oppose this motion;

5. It is expressly agreed that defendants do not waive their right to argue that this federal court should dismiss this action under the *Pullman* abstention doctrine; and

6. This Stipulation is expressly contingent on the approval of the Court. If the Court does not approve all of the conditions contained herein, the entire agreement will be null and void.

Dated:

LAW OFFICES OF
BARRY A. FISHER
By BARRY A. FISHER
Attorneys for Plaintiffs and the
Holy Spirit Association for
the Unification of World
Christianity
and
HENSON & EFRON, P.A.
JOSEPH T. DIXON, JR.
1200 Title Insurance Building
Minneapolis, Minnesota 55401
Telephone: 612-339-2500

WARREN SPANNAUS
Attorney General
State of Minnesota
RICHARD B. ALLYN
Solicitor General
By CHRISTINE L. LUZZIE
Special Assistant
Attorney General
Attorneys for Defendants and
the State of Minnesota
515 Transportation Building
Saint Paul, Minnesota 55155
Telephone: 612-296-2961

ORDER

Based on the foregoing Stipulation of Counsel, IT IS SO ORDERED.

Dated at Minneapolis, Minnesota, this 25 day of January, 1979.

ROBERT RENNER
Magistrate of United States
District Court

(Caption)

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

ORDER AMENDING COMPLAINT

Pursuant to the Stipulation of counsel for all parties herein and the subsequent Order of Magistrate Renner both dated January 25, 1979 and filed January 26, 1979,

IT IS HEREBY ORDERED THAT:

1. The Holy Spirit Association for the Unification of World Christianity, Inc. is hereby named and added as a party plaintiff in this action, and

2. The complaint herein is amended as follows:

a. The first sentence of paragraph 1 of the complaint is amended to read as follows:

"This is a civil rights suit for declaratory and injunctive relief pursuant to 42 U.S.C. §1983 and 28 U.S.C. §§2201-02 brought by the Unification Church and four individual followers of the Church's tenets to enjoin enforcement of the Minnesota solicitation licensing and reporting law, Minnesota Statutes Sections 309.50, et seq."

b. paragraph 3 of the complaint is amended to read in full as follows:

"The HOLY SPIRIT ASSOCIATION FOR THE UNIFICATION OF WORLD CHRISTIANITY, INC. is a California non-profit religious corporation (hereinafter the "Unification Church") founded in 1954. The Unification Church emphasizes evangelical missionary engagements including door-to-door and public place proselytising and solicitation of funds to support the Church. PAMELA VALENTE, aged 33, LARRY BARBER, aged 25, LARRY HAFT, aged 28, and KIMBERLY KORMAN, aged 23, have been believers of the doctrines expressed in the *Divine Principle*, and have followed the tenets of the Unification Church for 2 years 10 months, 2 years 10 months, 2 years 6 months and 3 years, respectively. They travel from place to place throughout the United States performing religious and missionary work in public places, and wish to continue doing so, including in public streets and parks of the State of Minnesota."

c. The second sentence of paragraph 9 of the complaint is amended to read as follows:

"The investigative powers to review all books and records of a Church are constitutionally overbroad, and entangles the State in the affairs of the Unification Church and its believers, including the plaintiffs herein."

Dated at Minneapolis, Minnesota, this 9th day of February, 1979.

ROBERT RENNER
Magistrate of U.S.
District Court

(Caption)

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

AFFIDAVIT OF SUSAN E. FORTNEY

SUSAN E. FORTNEY, being first duly sworn upon oath, deposes and says as follows:

1. I am a legal assistant assigned to the charities section of the Solicitor General Division in the Office of the Attorney General of Minnesota.

2. In the course of my duties, during September, 1978, I began to compile a listing of the names and addresses of all charitable organizations registered in Minnesota pursuant to the Minnesota solicitation law, Minn. Stat. §§ 309.50-309.61 (1978). This listing was completed on September 27, 1978 and is periodically updated. The list is attached as Exhibit A.

Further affiant sayeth not.

SUSAN E. FORTNEY

Subscribed and sworn to before me this 10th day of August, 1979. — Linda M. Lunzer, Notary Public, Ramsey County, Minnesota. My commission expires Oct. 13, 1984.

EXHIBIT A

AMVETS
National Service Foundation
c/o Joe F. Ramsey, Jr., Exec. Dir.
1710 Rhode Island Ave. N.W.
Washington D.C. 20036

A Better Chance, Inc.
334 Boylston St.
Boston, Mass. 02116

Abbott-Northwestern Hospital, Inc.
110 E. 18th St.
Minneapolis, MN 55901

Ability Building Center Inc.
1500 First Ave. N.E.
Rochester, MN 55901

Abortion Counseling Service of MN
549 Turnpike Road
Golden Valley, MN 55416

Abraxes, Inc.
1419 11th Ave. South
Minneapolis, MN

Action on Smoking & Health
2000 H St. N.W.
Washington D.C. 20006

Ada One Fund
c/o Ada National Bank
Ada, MN 56510

Aitkin Alano Society Inc.
114 Minnesota Ave. N.
Aitkin, MN 56431

Alano Society of Mpls., Inc.
2218 First Ave. South
Minneapolis, MN 55404

Alpha House, Inc.
2712 Fremont Ave. South
Minneapolis, MN 55408

Alternative Homes, Inc.
1786 Lake St.
Lauderdale, MN 55113

American Brotherhood of the Blind
Baltimore, MD

American Cancer Society
Minnesota Division Inc.
2750 Park Ave.
Minneapolis, MN 55407

Am-Council of the Blind, Inc.
1211 Conn. Ave. N. W.
Suite 506
Washington D. C. 20036

American Diabetes Association of Minnesota
7601 Bush Lake Road
Minneapolis, MN 55435

American Diabetes Association, Inc.
One West 48th St.
New York, NY 10020

American Field Service, Inc.
313 East 43rd St.
New York, NY 10017

American Foundation for the Blind, Inc.
15 West 16th Street
New York, NY 10011

American Friends of the Hebrew Univ., Inc.
11 East 69th St.
New York, NY 10021

American Friends Service Committee, Inc.
160 N. 15th Street
Philadelphia, Penn. 19102

Ambassador Cultural Foundation
2121 King Valley Rd. W.
Minneapolis, MN 55427

American Fund for Dental Health
211 East Chicage Ave.
Chicago, Ill. 60611

American Heart Association MN Affiliate
4701 W. 77th St.
Edina, MN 55435

American Health Association Foundation
1700 K Street N.W.
Suite 405
Washington D. C. 20006

American Indian Develop-Assoc.
1145 Marine Drive
Bellingham, Wash. 98225

American Kidney Fund, Inc.
7315 Wisconsin Ave.
Bethesda, MD 20014

The American Kor-Asian Foundation, Inc.
345 East 46th St.
New York, NY 10017

American Lebanese Syrian Associated Charities, Inc.
539 Lane Ave.
Memphis, Tenn. 38105

American Leprosy Missions
297 Park Ave. So.
New York, NY 10010

American Lung Assoc. of Hennepin County
1829 Portland Ave.
Mpls., MN 55404

American Medical Center at Denver
P. O. Box 537
Denver, Colorado 80214

American Printing House for the Blind
P. O. Box 6085
Louisville, Kentucky 40206

American Rehabilitation Foundation, Inc.
1800 Chicago Ave.
Minneapolis, MN 55404

American Social Health Assoc.
1740 Broadway
New York, NY 10019

Americans for Indian Opportunity Inc.
1816 Jefferson Plaza N.W.
Washington D. C. 20036

Americans United for Separation of Church & State
8120 Fenton St.
Silver Spring, MD 20910

AMICUS, Inc.
1009 Nicollet Ave.
Mpls., MN 55403

Animal Adoption Center, Inc.
13342 40th St. So.
Afton, MN 55001

Animal Humane Society of Henn. Co.
845 France Ave. North
Mpls., MN 55422

Animal Protection Institute Inc.
5894 South Land Park Drive
P. O. Box 22505
Sacramento, California 95822

Animal Welfare Institute
P. O. Box 3650
Washington D. C. 20007

Anoka County Assoc. for Retarded Citizens, Inc.
1061 109th Ave. N.E.
Blaine, MN 55434

Anoka County Community Action
Room 306
403 Jackson St.
Anoka, MN 55303

Anoka Lions Club
831 Elm St.
Anoka, MN 55303

Arrowhead Music Camp
Box 269
Moose Lake, MN 55767

Assoc. of Am-Indian Affairs, Inc.

Austin Association for Retarded Children
c/o Robert McCloskey
513 S.W. 10th Ave.
Austin, MN 55912

Austin Symphony Orchestra Society, Inc.
c/o Fred R. Kraft
109 North Main St.
Austin, MN 55912

Austin Youth Hockey Association, Inc.
c/o Bowlby Anfinson Crandall & Co.
P. O. Box 217
Austin, MN 55912

BMW Motorcycle Owners Club of MN, Inc.
5136 18th Ave. S.
Mpls., MN 55417

Bach Institute
628 Nicollet Mall
Minneapolis, MN 55402

Bach Society of Minnesota, Inc.
5029 Aldrich Ave.
Minneapolis, MN 55419

Bakken Museum of Electricity In Life
3055 Old Highway 8
Minneapolis, MN 55418

Baker, Laura School
211 Oak Street
Northfield, MN 55057

Barnum City & Township, Volunteer Comm. for Charities
c/o Barnum Charities
Ione Nelson, Sec.-Treas.
Barnum, MN

Belwin Foundation
808 Shelard Plaza
400 S. County Rd. 18
Minneapolis, MN 55426

Bemidji State University Foundation
1619 Bixby Ave.
Bemidji, MN 56601

Benton County Combined Charities, Inc.
Foley, MN 56329

Bethesda Foundation
559 Capitol Blvd.
St. Paul, MN 55103

Big Brothers/Big Sisters of America
220 Suburban State Bldg.
Philadelphia, PA 19103

Big Brothers of Greater St. Paul Inc.
711 Empire Building
350 Robert St.
St. Paul, MN 55101

Big Brothers Foundation, Inc.
404 South 8th St.
Minneapolis, MN 55404

Big Brothers, Inc. 404 South 8th St.
Minneapolis, MN 55404

Big Sister Association, Inc.
202 Citizens Aid Bldg.
Minneapolis, MN 55404

Blessed Virgin Mary Council, 4381
6831 Highway 65
Minneapolis, MN 55432

Blinded Veterans Association
1735 DeDalle St. N.W.
Washington D. C. 20036

Blue Waters React
11825 Co. Rd. 103
Champlin, MN 55315
James Radke, President

The Box Project
P. O. Box 435
Plaineville, Conn. 06062

Boys Club of America
771 First Ave.
New York, NY 10017

Boys' Club of Duluth, Inc.
2623 W. Second St.
Duluth, MN 55806

Boys Club of Minneapolis, Inc.
2410 Irving Ave. N.
Minneapolis, MN 55411

Braille Sports Foundation
Room 301
730 Hennepin
Minneapolis, MN 55402

Brainerd Community College Foundation
P. O. Box 467 College Drive
Brainerd, MN 56401

Bread for the World, Inc.
235 East 49th St.
New York, NY 10017

The Bridge for Runaway Youth, Inc.
2200 Emerson Ave. No.
Brooklyn Center, MN 55430

Brother DePaul Charity Foundation
P. O. Box 348
Minneapolis, MN 55440

Hallie Q. Brown Community Center, Inc.
270 North Kent St.
St. Paul, MN 55102

Pearl S. Buck Foundation, Inc.
Green Hills Farm, Bucks County
P. O. Box 181
Perkasie, Penn. 18944

Burnsville Jaycees
13422 Washburn Drive
Burnsville, MN 55337

CCA, Inc. (Citizens for Community Action)
Highland Station
P. O. Box 16008
St. Paul, MN 55116

CEF Education Foundation
333 Griggs Midway Bldg.
1821 University Ave.
St. Paul, MN 55104

Cents, Inc.
731 21 Ave. S. No. 49
Minneapolis, MN 55454

Cal Farleys Boys Ranch
P. O. Box 1890
Amarillo, Texas 79174

Cancer Care, Inc. of National Cancer Foundation
One Park Ave.
New York, NY 10016

Camp New Hope, Inc.
Cambridge, MN 55008

Capitol Community Services, Inc.
1060 Park Street
St. Paul, MN 55116

Brooklyn Center Jaycees
5937 Emerson Ave. N.
Brooklyn Center, MN 55430

Camp Sunrise
15 South 5th St.
Minneapolis, MN 55401

Cannon Falls Jaycees
RR 2 Box 128
Cannon Falls, MN 55009

CARE
660 First Ave.
New York, NY 10016

Casey Park Improvement Association
7340 Farkey Lane
Prior Lake, MN 55372

Catholic Athletic Association
156 West Ninth St.
St. Paul, MN 55102

Catholic Parents Club
156 West Ninth St.
St. Paul, MN 55102

Catholic Social Service of St. Paul
355 Washington St.
St. Paul, MN 55102

Catholic Welfare Services of Minneapolis
404 South 8th St.
Minneapolis, MN 55404

Center for Community Action
1501 South Fourth St.
Minneapolis, MN 55404

Center for Environmental Education
2100 M. St. N.W.
Washington, D. C. 20037

Center for Humanism, Awareness & Resource Training
1920 S 1st St. No. D101
Minneapolis, MN 55454

Center for New Democratic Processes
1414 Soo Line Bldg.
Minneapolis, MN 55402

Center for Local Self-Reliance
3302 Chicago Ave. S. Minneapolis, MN 55407

Centro Cultural Chicano
204 W. Franklin Ave.
Minneapolis, MN 55494

Cedar Valley Rehab. Workshop
2111 4th St. N.W.
Austin, MN 55912

Central Minnesota Council
Boy Scouts of America
1701 North 9th Ave.
St. Cloud, MN 56301

Central Mesabi Medical Center, Inc.
2015 Fourth Ave. East
Hibbing, MN 55746

Central Minnesota Legal Service
501 Park Ave.
Minneapolis, MN 55415

Chadaschay, Inc.
Route 1
North Branch, MN 55056

Child Care Resource Center & Library, Inc.
406 East 48th St.
Minneapolis, MN 55409

Children, Inc.
P. O. Box 5381
Richmond, Virginia 23220

Children's Dental Services Assoc. Inc.
4117 Thrushwood Lane
Hopkins, MN 55343

Children's Aid International
901 N. Washington St.
Alexandria, VA 22314

Campus Crusade for Christ
Arrowhead Springs
San Bernadino, Calif.

Children's Health Center, Inc.
2525 Chicago Ave. S.
Minneapolis, MN 55404

Children's Heart Fund
900 S. 8th St.
Minneapolis, MN 55414

Children's Home Society of Minnesota
2230 Como Ave.
St. Paul, MN 55108

Children's Hospital Assoc., Inc.
311 Pleasant Ave.
St. Paul, MN 55102

Children's Oncology Services
2400 3rd Ave.
Minneapolis, MN

Children's Theater Company & School
2400 3rd Ave.
Minneapolis, MN 55404

Child Dev. Supporters
1011 N. 14th St.
Minneapolis, MN 55411

Chimera Theater Company
30 E. Tenth St.
St. Paul, MN 55101
Chisago City Booster Club

Combined Charities Drive
Box 302
Chisago City, MN 55013

Chisago County Humane Society
Box 124
Wyoming, MN 55092

Chisago Lakes Jaycees
Box 431
Chisago City, MN 55013

Chisago Lake United Charity Drive
Route 1 Box 802A
Lindstrom, MN 55045

Christian Aided Development through Extraordinary Training Cadet, Inc.
P. O. Box 231
Southaven, Mississippi 38671

Christian American Liberties League, Inc.
2200 Hollyridge Drive
Los Angeles, Calif. 90068

Christian Children's Fund, Inc.
203 East Gary St.
Richmond, VA 23261

The Christian Herald Childrens Home
40 Overlook Drive
Chappaqua, NY 10514

Christian Record Braille, Inc.
4444 S. 52 St.
Lincoln, Nebraska 68506

The Christ Child Society of St. Paul, Inc.
715 Edgerton St.
St. Paul, MN 55101

Christus Community, Inc.
2448 18th Ave. S.
Minneapolis, MN 55404

Chrysalis Center for Women
2104 Stevens Ave. S.
Minneapolis, MN 55404

Christian Shield Society, Inc.
3044 Longfellow Ave.
Minneapolis, MN 55407

Church of the Crucifixion
407 S. 2nd St.
LaCrescent, MN 55947

Citizens for a Clean Mississippi, Inc.
Island View Drive
Wabasha, MN 55981

Citizens for Decency through Law, Inc.
450 Leader Bldg.
Cleveland, Ohio 44114

Citizens Band Serving People
7710 36 Ave. N. No. 104
Minneapolis, MN 55427

City of Hope
A National Medical Center
c/o Mrs. Lorraine Meyerson
7462 Oxford St.
St. Louis Park, MN 55426

Columbian Women's Club
c/o Mrs. Roy Christianson
1716 Galtier
St. Paul, MN 55102

Common Cause
2030 M St. N.W.
Washington D. C. 20036

Commons House School
2000 South 5th St.
Minneapolis, MN 55404

Community Action Council Inc.
13710 Nicollet Ave. S.
Burnsville, MN 55337

Community Design Center of Minnesota
118 East 26th St.
Minneapolis, MN 55404

Community Drive Branch
North Branch
Box 271
North Branch, MN 55056

Community Health & Welfare Council of
Hennepin County, Inc.
404 S. 8th St.
Minneapolis, Mn 55404

Community Housing Corporation of Greater St. Paul, Inc.
290 Metro Square
St. Paul, MN 55101

Community Volunteer Service of Stillwater
112 S. Main St.
Stillwater, MN 55082

Common Ground Product, Inc.
13012 Cedar Lake Road
Minnetonka, MN 55343

Compas
700 St. Paul Building
6 West 5th St.
St. Paul, MN 55102

Comprehensive Services for Disabled Citizens, Inc.
4114/39th Ave. South
Mpls., MN 55406

Compassion, Inc.
7774 W. Irving Park Rd.
Chicago, Ill 60634

Concern, Inc.
1499 McAfee
St. Paul, MN 55106

Concordia Singing Society
c/o Ruth Gappa
257 W. Page St.
St. Paul, MN 55104

Contact-Twin Cities
83 South 12th St.
Minneapolis, MN 55403

Cook County Chapter
Northwestern Minnesota
Environmental Economic Council
P. O. Box G
Two Harbors, MN 55616

Coon Rapids Boy Scout
Troop 317
11362 Wren St. N.W.
Coon Rapids, MN 55433

Concoran Athletic Assoc.
Route 1, Box 160
Rogers, MN 55374

Cops in Concert
101 E. Tenth St.
St. Paul, MN 55101

CORE
200 West 135th St.
New York, NY 10030

Corporation for Consumer Affairs, Inc.
1745 University Ave.
St. Paul, MN 55106

Correctional Service of Minnesota
1427 Washington Ave. S.
Minneapolis, MN 55404

Cougars Unlimited
P. O. Box 6507
St. Paul, MN 55106

Coulee Region Humane Society
Box 1324
LaCrosse, Wisc. 54601

Council on Battered Women
45 11th St. N.E.
Atlanta, GA 50309

Council on Social Work Education
345 East 46th St.
New York, NY 10017

Courage Auxiliary
3915 Golden Valley Rd.
Golden Valley, MN 55422

The Cousteau Society
777 Third Ave.
New York, NY 10017

Country Entertainers Assoc.
1207 Gardena Ave. N.E.

The Cricket Theater Corp.
345 13th Ave. N.E.
Minneapolis, MN 55413

Crippled Children's School Inc.
Box 23
Worthington, MN 56187

Crossroads, Inc.
Suite 124B
4901 W. 77th St.
Edina, MN 55435

Cystic Fibrosis Foundation
c/o Kass, Goodkind, Wechsler & Gerstein
122 E. 42nd St.
New York, NY 10017

Council of Americanization
505 N.W. Federal Bldg.
730 Hennepin Ave.
Minneapolis, MN

Crippled Child Relief, Inc.
1900 Chicago Ave.
Minneapolis, Minn. 55404

Dakota's Children, Inc.
400 W. Marie St.
W. St. Paul, MN 55118

Dakota's Children Benefit Assoc., Inc.
918 Commerce Bldg.
St. Paul, MN 55101

Dakota County Association for Retarded Children
33 E. Wentworth
W. St. Paul, MN 55118

Dakota County Developmental Learning Center
P. O. Box J
2101 Sibley Memorial Hwy.
Mendota Heights, MN 55150

Danish American Fellowship Institute
4200 Cedar Ave.
Mpls., MN 55407

Defenders of Wildlife
1244 19th St. N.W.
Washington D. C. 20036

Deep Portage Conservation Foundation
Box 342
Pine River, MN 56474

Demosthenes
Chapter No. 66
Order of Ahepa
23 S. 6th St.
Minneapolis, MN 55402

Department of Minnesota Jewish War Veterans
1414 S. Mississippi River Blvd.
St. Paul, MN 55116

Disabled American Vets., Inc.
P. O. Box 14301
Cincinnati, Ohio 45214

Divine Redeemer Memorial Hospital Auxiliary
724 19th Ave. N.
S. St. Paul, MN 55075

Juan Diego Club
452 Concord
St. Paul, Minnesota

The Thomas Dooley Foundation, Inc.
442 Post St.
San Francisco, Calif. 94102

Drug Education for Youth, Inc.
415 Summit Ave.
St. Paul, Minnesota

Ducks Unlimited Minnesota Committee
57th & University N.E.
Minneapolis, MN 55432

Duff's Celebrity Tournaments for Charities Inc.
212 Walker Bldg.
803 Hennepin Ave.
Minneapolis, MN 55403

Duluth Association for Retarded Citizens, Inc.
203 Ordean Bldg.
Duluth, MN 55802

Duluth Community Health Center, Inc.
2 East 5th St.
Duluth, MN 55805

Duluth Camp No. 2341
Modern Woodmen of America
2031 W. First St.
Duluth, MN

Duluth Indian Action Council
217 North 4th Ave. W.
Duluth, MN 55806

Duluth Lighthouse for the Blind, Inc.
7 N. 27th Ave. W.
Duluth, MN 55806

BPO Elks
Duluth Lodge 133
2502 London Road
Duluth, MN 55812

Duluth Sheltered Workshop, Inc.
310 Lake Ave. S.
Duluth, MN 55802

The Dunwoody Industrial Institute
818 Wayzata Blvd.
Minneapolis, MN 55403

Duluth Police Chief Association
City Hall Police Department
Duluth, MN 55802

Dakota Boys Ranch
P. O. Box 396
Minot, ND 587-1

Directions for Youth
1089 Portland
St. Paul, MN 55104

Grand Aeric F.O.E. Eagles Cancer Fund
2401 W. Wisconsin
Milwaukee, Wisc. 53233

East Side Neighborhood Service
1929 Second St. N.E.
Minneapolis, MN 55418

East Side Skating Club
862 White Bear Ave.
St. Paul, MN 55119

Eden Rehabilitation & Treatment Facility, Inc.
1025 Portland Ave.
Minneapolis, MN 55404

The Edina ABC Foundation
6304 France Ave. S.
Edina, MN 55410

Edina Federated Junior Womens Club
6721 Gleason Rd.
Edina, MN 55435

Edina Foundation
Edina City Hall
4801 W. 50th St.
Edina, MN 55424

Elk River Jaycees
c/o Clifford C. Lundberg
Box 219
Elk River, MN 55330

Elk River Youth Hockey Assn., Inc.
Elk River, MN 55330

Elks, Witmar Lodge
North Highway 71
Wilmar, MN 56201

Emergency Funding Service
732 W. Central
St. Paul, MN 55104

Energy Action Committee Inc.
1523 L St. N.W.
Suite 302
Washington D. C. 20005

Environmental Defense Fund, Inc.
475 Park Ave. S.
New York, NY 10016

Environment for Learning, Inc.
921 Bayless Ave.
St. Paul, MN 55114

Environmental Balance Association
1030 Minnesota Bldg.
St. Paul, MN 55101

Epilepsy Foundation of America
1828 L St.
Suite 406
Washington D. C. 20036

The Episcopal Cursillo Community of Minnesota
5224 Minnetonka Blvd.
Mpls., MN 55403

Episcopal Church Home of Minnesota, Inc.
1879 Ferina Ave.
St. Paul, MN 55104

Episcopal Lay Discipleship
5437 Pleasant Ave. S.
Minneapolis, MN 55419

Estonian House of Minnesota, Inc.
1417 19th East Lake St.
Minneapolis, MN 55407

Eventide Lutheran House of Moorhead
1405 7th St. S.
Moorhead, MN 55407

Extraordinary Learning and Educational Complex, Inc.
1708 Oak Park Ave. N.
Mpls., MN 55411

Enablers, Inc.
104 W. Franklin
Mpls., MN 55404

Environmental Balance Association
1030 Minnesota Building
St. Paul, Minnesota 55101

Ebenezer Society
2523 Portland Ave. So.
Minneapolis, Minnesota 55404

Juel Fairbanks Aftercare Residence
806 N. Albert
St. Paul, Minnesota 55104

Fair Chance, Inc.
Western Service Center
2340 E. Elvira
Tucson, Arizona 85706

Fairmont Community Hospital Auxiliary
835 Johnson St.
Fairmont, Minnesota 56031

Fairview Community Hospital
2312 South 6th Street
Minneapolis, Minnesota 55454

Family & Children's Service
414 South 8th Street
Minneapolis, Minnesota 55404

Family Consultation Center, Inc.
1312 N.W. Seventh Street
Rochester, Minnesota 55901

Family Service of the St. Croix Area
115 Union Street
Stillwater, Minnesota 55082

Family Service of St. Paul
355 Washington Street S.
St. Paul, Minnesota 55102

Family Service Society, Inc. of Duluth
128 W. 1st Street
Suite 200 New Garrick Building
Duluth, Minnesota 55802

Family Service of S. St. Paul
633 S. Concord Street
Drovers State Bank
So. St. Paul, Minnesota 55075

Family Tree, Inc.
1599 Selby Avenue
St. Paul, Minnesota 55104

Father Flanagan's Boys Home
c/o Richard D. Amino
Kutak, Rock, Cohen, Campbell, Garfink & Wood
600 Woodmen Tower
Omaha, Nebraska 68102

Fellowship for Renewed Living
Wilder Clinic
919 Lafond Avenue
St. Paul, Minnesota 55104

Fergus Falls Skating Fund, Inc.
P.O. Box 691
Fergus Falls, Minnesota 56537

Film in the Cities, Inc.
2388 University Avenue
St. Paul, Minnesota 55114

Financial Accounting Foundation
High Ridge Park
Stamford, Connecticut 06905

For The Love of Kids
4200 Abbott Avenue South
Minneapolis, Minnesota 55410

The Fortune Society
29 E. 22nd Street
New York, New York 10010

Forest History Society, Inc.
2100 First National Bank
St. Paul, Minnesota 55101

Forest Lake Alano Society, Inc.
P. O. Box 58
Forest Lake, Minnesota 55025

Fort Snelling Memorial Chapel Foundation
3615 Beard Avenue South
Minneapolis, Minnesota 55422

Foster Parents Plan, Inc.
National Headquarters
P. O. Box 400
Warwick, Rhode Island 02886

The Foundation for Islands of Peace, Inc.
6315 University Avenue N.E.
Fridley, Minnesota 55432

Foundation for Religious Education on Equality, Inc.
4115 Sunset Boulevard
St. Louis Park, Minnesota

Fraternal Order of Eagles
136 W. 6th Street
Willmar, Minnesota 56201

Freeborn County Combined Charities, Inc.
Box 57
Oakland, Minnesota 56076

Freedom Acres
P. O. Box 15
Winona, Minnesota 55987

Freedom House
3020 Lyndale Avenue South
Minneapolis, Minnesota 55408

Fresh Air, Inc.
3406 Lyndale Avenue South
P. O. Box 7174
Minneapolis, Minnesota 55408

Freshwater Biological Research Foundation
2500 Shadywood Road
P. O. Box 90
Navarre, Minnesota 55392

Fridley Lions
1000 Gardenia Avenue N.E.
Minneapolis, Minnesota 55432

Friends Actively Concerned With Treville
7916—61st Avenue North
New Hope, Minnesota 55528

Friends of Animal Adoptions, Inc.
4717—27th Avenue South
Minneapolis, Minnesota 55406

Friends of the Boundary Waters Wilderness
1783 Lindig Street
St. Paul, Minnesota 55113

Friends of Our Little Brothers
100 W. Camelback Road
Phoenix, Arizona 85013

Friends of the Iron Range Interpretative Center
Box 392
Chisholm, Minnesota 55719

Friends of the Public Library of the City of St. Paul
90 W. 4th Street
St. Paul, Minnesota 55102

Front Avenue Senior Booster Club
989 Virginia
St. Paul, Minnesota 55117

Fund for an Open Society
9803 Roosevelt Boulevard
Philadelphia, Pennsylvania 19136

Fund for Animals, Inc.
140 West 57th Street
New York, New York 10019

Friends of SOS Children's Fund

Gamehaven Council, Inc.
1124—11-1/2 St. S.E.
Rochester, Minnesota 55901

Gaylord Combine Charities, Inc.
Box 23
Gaylord, Minnesota 55334

Girl Scout Council of St. Croix Valley
47 West 9th Street
St. Paul, Minnesota 55102

Gita Ashram
500—15th Avenue S.W.
New Brighton, Minnesota 55112

Glencoe Jaycees
c/o Minnesota Jaycees
124 Columbia Court Building B
Chaska, Minnesota 55318

Golden Gloves, Inc.
425 Portland Avenue
Minneapolis, Minnesota 55488

Golden Valley Baseball, Inc.
2022 IDS Center
Minneapolis, Minnesota 55402

Goodfellowship Community Club
124—88th Avenue West
Duluth, Minnesota 55808

Gopher Pup Tent No. 2
Military Order of the Cootie
2902 Chicago Avenue
Minneapolis, Minnesota 55407

Gopher State Blind Associates
4339—44th Avenue South
Minneapolis, Minnesota 55406

Grand Aerie of Fraternal Order of Eagles
2401 West Wisconsin Avenue
Milwaukee, Wisconsin 53233

Grand Rapids Council of Campfire Girls, Inc.
P. O. Box F
Grand Rapids, Minnesota 55744

Granville House, Inc.
1665 Woodbury Drive
Woodbury, Minnesota 55042

Greater St. Paul Home Services, Inc.
1954 University Avenue
St. Paul, Minnesota 55104

Greater Minneapolis Day Care Association
430 Oak Grove B-10
Minneapolis, Minnesota 55403

Greater Minneapolis Girl Scout Council
200 Gorham Building
127 North 7th Street
Minneapolis, Minnesota 55403

Greater Twin Cities Youth Symphonies
430 Oak Grove Street
Suite B-5
Minneapolis, Minnesota 55403

Graham, Billy Evangelistic Assoc.
1300 Harmon Place
Mpls., MN 55403

Greenpeace Foundation of America
240 Fort Mason
San Francisco, California 94123

Grocery on Wheels
100 North Oxford
St. Paul, Minnesota 55104

Groves Learning Center
2000 Hopkins Crossroads
Hopkins, Minnesota 55434

Guadalupe Youth Council
452 Concord Street
St. Paul, Minnesota 55107

Guild of Performing Arts
504 Cedar Avenue
Minneapolis, Minnesota 55404

Gustavas II Adolphus Society
1628 East Lake Street
St. Paul, Minnesota 55407

The Guthrie Theater Foundation
725 Vineland Place
Minneapolis, Minnesota 55403

Guadalupe Area Project, Inc.
381 E. Robie
St. Paul, MN 55107

H.I.R.E.D.
1009 Nicollet Mall
Minneapolis, Minnesota 55403

Hadassahi, The Women's Zionist
Organization of America, Inc.
Minneapolis, Minnesota

Hammer School
1909 E. Wayzata Boulevard
Wayzata, Minnesota 55391

Handi Ham System of Minnesota
3915 Golden Valley Road
Golden Valley, Minnesota 55422

Hanschen Klein Child Development Center
5009 Park Avenue South
Minneapolis, Minnesota 55417

Harding Area Hockey Association, Inc.
c/o Lowell Larson
1845 Old Hudson Road No. 103
St. Paul, Minnesota 55119

Harriet Tubman Women's Shelter, Inc.
3001 Oakland Avenue
Minneapolis, Minnesota 55407

Hazel Park Commercial Club Ladies Auxiliary, Inc.
862 White Bear Avenue
St. Paul, Minnesota 55106

Hazelden Foundation
Box 11
Center City, Minnesota 55012

Head of the Lakes Goodwill Industries, Inc.
1732 West Superior Street
Duluth, Minnesota 55806

Headwaters Area Council, Inc.
Boy Scouts of America
P. O. Box 570
Hibbing, Minnesota 55746

Health Care International, Inc.
5378 East Bald Eagle Boulevard
White Bear Lake, Minnesota 55110

Health Central Institute for Education of Cancer Research
2810—57th Avenue North
Brookdale Towers
Minneapolis, Minnesota 55430

Health Systems Agency of Western Lake Superior
202 Ordean Building
424 West Superior Street
Duluth, Minnesota 55802

Heart Disease Research Foundation
963 Essex Street
Brooklyn, New York 11208

Helen Keller International, Inc.
22 West 17th Street
New York, New York 10011

Help Enable Alcoholics Receive Treatment, Inc.
403 Maria Avenue
St. Paul, Minnesota 55106

Help Hospitalized Veterans
708 West Redwood Street
San Diego, California 92103

Hendricks Area Community Chest
Hendricks, Minnesota 56136

Hennepin Area Youth Diversion Project
430 Oak Grove
Apartment No. 312
Minneapolis, Minnesota 55403

The Heritage Foundation, Inc.
513 C Street N.E.
Washington, D. C. 2003

Hiawatha Children's Home, Inc.
1820 Valkyue Drive N.W.
Rochester, Minnesota 55901

Hibbing (Jaycees) Junior Chamber of Commerce
P. O. Box 233
Hibbing, Minnesota 55746

Highland Lodge No. 99
Independent Order of Odd Fellows
705—42nd Avenue North
Minneapolis, Minnesota 55412

Hilltop Ministries of the Risen Christ
659 Surrey Avenue
St. Paul, Minnesota 55106

Hinckley Combined Charities
c/o Jean Bergreun
Box 433
Hinckley, Minnesota 55037

Holy Childhood Women's Club
1435 Midway Parkway
St. Paul, Minnesota 55108

Holy Childhood Cana Club
1435 Midway Parkway
St. Paul, Minnesota 55108

Holy Childhood Men's Club
1435 Midway Parkway
St. Paul, Minnesota 55108

Holyland Christian Mission
2000 East Red Bridge Road
Kansas City, Missouri 64131

Hospitality House, Inc.
1220 Logan Avenue North
Minneapolis, Minnesota 55411

House of Charity, Inc.
250—17th Avenue North
Minneapolis, Minnesota 55440

Holt International Children's Service, Inc.
P. O. Box 2420
Eugene, Oregon 97402

Houston United Campaign
Houston, Minnesota 55943

Sarah Hughes Irish Children
6885 Rosemary Road
Eden Prairie, Minnesota 55343

Human Growth Foundation, Inc.
4930 W. 77th Street
Suite 150
Edina, Minnesota 55435

Indian Center of Rochester, Minnesota, Inc.
1204 First Street S.W.
Rochester, Minnesota 55901

Indian Health Board of Minneapolis, Inc.
2495—18th Avenue South
Minneapolis, Minnesota 55404

Indian Neighborhood Club on Alcohol and Drugs
1805 Portland Avenue South
Minneapolis, Minnesota 55404

Information and Referral Service of SW Minnesota
Marshall, Minnesota 56258

Information & Volunteer Center of Olmstead County, Inc.
913 Southeast Third Avenue
Rochester, Minnesota 55901

Inner City Youth League
175 N. Victoria
St. Paul, Minnesota 55104

Insight, Inc.
Box 55
Stillwater, Minnesota 55082

Institute of Cultural Affairs
2302 Balisdell Avenue
Minneapolis, Minnesota 55404

Institute of Cultural Affairs
Chicago, Illinois

Institute of Professional Actor Training
403 Cedar Avenue South
Minneapolis, Minnesota 55454

International Assembly of Christians
122 West Franklin Avenue
Minneapolis, Minnesota 55404

International Fund for Animal Welfare, Inc.
c/o J. L. Brown, Executive Assistant
IFAW-USA-28001 W. Oakland Avenue
Cleveland, Ohio 44140

International Heart Relief
2545 Chicago Avenue
Suite 111
Minneapolis, Minnesota 55404

International Human Assistance Program
345 East 46th Street
New York, New York 10017

International Institute of Minnesota
1694 Como Avenue
St. Paul, Minnesota 55108

International Oceanographic Foundation
3979 Rickenbacker Causeway
Virginia Key, Miami, Florida 33149

International Rescue Committee, Inc.
386 Park Avenue South
New York, New York 10016

Illusion Theater & School Inc.
323 Second Ave. No.
Mpls., MN 55401

Interstate Rehabilitation Association, Inc.
P. O. Box 404
Red Wing, Minnesota 55066

Italian-American Club of Minneapolis, Inc.
2211 Central Avenue N.E.
Minneapolis, Minnesota 55418

Iron Range Rehabilitation Center
9th Avenue North
Virginia, Minnesota 55792

Jackson United Fund, Inc.
Box 224
Jackson, Minnesota 56143

Jamestown Foundation
11550 Jasmine Trail
Stillwater, Minnesota 55082

Janesville Area Jaycees
P. O. Box 148
Janesville, Minnesota 56048

Jesus Christ Miracle Celebration
119 W. 6th Street
St. Paul, Minnesota 55102

Jewish Community Center of Greater Minneapolis
4330 Cedar Lake Road South
Minneapolis, Minnesota 55416

Jewish Community Center of St. Paul
1375 St. Paul Avenue
St. Paul, Minnesota 55116

Jewish Community Relations Council
Suite 400
15 South 9th Street Building
Minneapolis, Minnesota 55402

Jewish Family & Children's Service of Minneapolis
811 LaSalle Court
Suite C-6
Minneapolis, Minnesota 55402

Jewish Family Service of St. Paul
1546 St. Clair Avenue
St. Paul, Minnesota 55101

Jewish Federation & Community Council
1602 E. 2nd Street
Duluth, Minnesota 55812

Jewish Vocational Services
1821 University Avenue S.—369
St. Paul, Minnesota 55104

The Johnson Institute
201 Valley Park Building
7325 Wayzata Boulevard
Minneapolis, Minnesota 55426

Joint Urban Mission Program
122 W. Franklin Avenue
Minneapolis, Minnesota 55404

Jonathan Group Home, Inc.
4537—3rd Avenue
Minneapolis, Minnesota 55409

Jones-Harrison Home
3700 Cedar Lake Avenue
Minneapolis, Minnesota 55416

Junior Achievement of Duluth
1623 E. 7th Street

Junior Achievement of Greater Minneapolis
2633—4th Avenue South
Minneapolis, Minnesota 55408

Junior Achievement of St. Paul
468 North Robert Street
St. Paul, Minnesota 55101

The Juvenile Diabetes Foundation
23 E. 26th Street
New York, New York 10010
or
405—2nd Avenue South
Minneapolis, Minnesota 55402

Juvenile Justice Center
499 West 7th Street
St. Paul, Minnesota 55102

K.I.D.S., Inc.
c/o Minnesota Farmer's Union
1275 University Avenue
St. Paul, Minnesota 55104

Keren Or Inc., a/k/a Jerusaleum Institutions for the Blind
1133 Broadway
New York, New York 10010

Kidney Foundation of the Upper Midwest, Inc.
1821 University Avenue
St. Paul, Minnesota 55104

Martin Luther King Center of Social Change, Inc.
c/o Harper and Smith
Suite 1204
The Life of Georgia Tower
Atlanta, Georgia 30308

Kiwanis Club of Sunraisers, Inc.
2104—23rd Street N.W.
Rochester, Minnesota 55901

Knights of Columbus Council 1600
Columbian/Hall Highway 61
S. Hastings
Hastings, Minnesota 55033

Knights of Columbus 3656
4947 W. Broadway
Minneapolis, Minnesota 55429

Knights of Columbus
Hopkins Council 2232
34—10th Avenue South
Hopkins, Minnesota 55343

Knights of Columbus 4021
2555 No. Snelling Avenue
St. Paul, Minnesota 55113

Korean Cultural Freedom Foundation
1028 Connecticut Avenue N.W.
Washington, D. C. 20036

Lake Agassiz Council of Camp Fire Girls, Inc.
824 Center Avenue
Moorhead, Minnesota 56560

Lake County Council for Community Services, Inc.
312 South Avenue
Two Harbors, Minnesota 55616

Lake Owasso Residence Volunteer Council
210 North Owasso Boulevard
Shoreview, Minnesota
Duluth, Minnesota

Lake Region Rehabilitation Ind., Inc.
1107 West Fir Avenue
Fergus Falls, Minnesota 56537

Lake Superior Council Boy Scouts of America
424 West Superior Street
Duluth, Minnesota 55802

Lake Superior Steelhead Association, Inc.
P. O. Box 6034
Duluth, Minnesota 55806

Lakonias Association
8 North 5th Street
Minneapolis, Minnesota 55403

Lakeview Memorial Hospital Association, Inc.
919 W. Anderson Street
Stillwater, Minnesota 55082

Lakeview United Methodist Home
Summit Drive
Fairmont, Minnesota 56031

Land of Lakes Choirboys
826 Upcand Avenue
Elk River, Minnesota 55330

Latin America Mission, Inc.
285 Orchard Terrace
Bogate, New Jersey 07603

Lawyers Concerned for Lawyers
417 Minnesota Federal Building
Minneapolis, Minnesota 55402

League of Women Voters of Minnesota
555 Wabasha
St. Paul, Minnesota 55102

Legal Aid Society of Minneapolis, Inc.
501 Park Avenue
Minneapolis, Minnesota 55415

Legal Assistance of Ramsey County, Inc.
370 Selby Avenue
St. Paul, Minnesota 55102

Legal Assistance of Olmsted County, Inc.
219-1/2 South Broadway or
1312—7th Street N.W.
Rochester, Minnesota 55901

Legal Assistance of Washington County, Inc.
3825 Lake Elmo Avenue North
Lake Elmo, Minnesota 55042

Legal Rights Center
808 E. Franklin
Minneapolis, Minnesota 55404

Leukemia Society of America, Inc.
211 East 43rd Street
New York, New York 10017

Lights from the North, Inc.
6071—6th Street N.E.
Fridley, Minnesota 55432

Lindstrom United Charities
Box 703
Lindstrom, Minnesota 55045

Lions Foundation of Minneapolis
308 Baker Building
Minneapolis, Minnesota 55402

Little Brothers of the Poor
1845 E. Lake Street
Minneapolis, Minnesota 55407

Little Sisters of the Poor of St. Paul
90 Wilken Street
St. Paul, Minnesota 55102

Loring Nicollet-Bethlehem Community Center, Inc.
2539 Pleasant Avenue South
Minneapolis, Minnesota 55403

Loring Skating Club
3110 Blaisdell Avenue South
Minneapolis, Minnesota 55408

Love Lines, Inc.
328 E. Hennepin Avenue
Minneapolis, Minnesota 55414

Lower St. Croix Valley Youth Center
Route 1
Lakeland, MN 55043

Loyal Order of Moose
Minneapolis No. 38
624—3rd Avenue South
Minneapolis, Minnesota 55413

Loyal Order of the Moose Lodge 963
1946 English Street
St. Paul, Minnesota 55109

Loyola Youth Center Little League
c/o 130 North 6th Street
Mankato, Minnesota 56001

Lutheran Retirement Home of Southern Minnesota
400 North 4th Avenue
Furman, Minnesota 56088

Lutheran Social Service of Minnesota
2414 Park Avenue
Minneapolis, Minnesota 55404

Lymgblomsten
1298 N. Pascal Street
St. Paul, Minnesota 55108

Lyon County H.H. Club
Marshall, Minnesota 56258

Little Sisters of the Poor—Mpls.
215 Broadway N. E.
Minneapolis, Minnesota 55413

Mankato Lions Club
P. O. Box 303
Mankato, Minnesota 56001

Mankato Policeman's Federation, Inc.
Box 363
Mankato, Minnesota 56001

Mankato Rehabilitation Center, Inc.
309 Holly Lane
P. O. Box 818
Mankato, Minnesota 56001

Map International
P. O. Box 50
327 Gundersen
Wheaton, Illinois 60187

Marian Council Home Association
1114 W. 79th Street
Minneapolis, Minnesota 55420

Marshall Jaycees
Box 195
Marshall, Minnesota 56258

Masonic Memorial Hospital Fund, Inc.
1015 Northwestern Bank Building
Minneapolis, Minnesota 55402

Master Eye Foundation of America
901 Produce Bank Bldg., 100 N. 7
Minneapolis, Minnesota 55403

Memorial Sloan Kettering Cancer Center
1275 York Avenue
New York, New York 10021

Meals for Millions Foundation
815—2nd Avenue
Suite 501
New York, New York 10017

Menahga Jaycees
Route 1, Box 26A
Menahga, Minnesota 56464

Mental Health Association of Minnesota, Inc.
4510 West 77th Street
Room 100
Minneapolis, Minnesota 55435

Methodist Hospital Foundation
6500 Excelsior Boulevard
St. Louis Park, Minnesota 55420

Metropolitan Cultural Arts Center, Inc.
1530 Russell Avenue North
Minneapolis, Minnesota 55411

Metropolitan Economic Development Association
2021 East Hennepin
Suite 370
Minneapolis, Minnesota 55413

Metropolitan Medical Center Children's Heart Fund
900 South 8th Street
Minneapolis, Minnesota 55414

Metropolitan Medical Center Foundation
900 South Eighth Street
Minneapolis, Minnesota 55359

Metropolitan Medical Center Research Foundation
900 South Eighth Street
Minneapolis, Minnesota 55404

Metropolitan Organization for Displaced Women
Grand Avenue
St. Paul, Minnesota

Metropolitan Park Foundation
Route 1, Box 32
Maple Plain, Minnesota 55359

Metropolitan Senior Federation
1951 University Avenue
St. Paul, Minnesota 55104

Metropolitan Volunteer Senior Entertainment Program
918 E. 22nd Street
Apartment 304
Minneapolis, Minnesota 55404

Merriam Park Community Center
2000 St. Anthony Avenue
St. Paul, Minnesota 55104

Merriam Park Neighborhood Housing Service, Inc.
1589 Selby Avenue
St. Paul, Minnesota 55104

Mexican American Legal Defense & Educational Fund
145 Ninth Street
San Francisco, California 94103

Midway Hospital Foundation, Inc.
1700 University Avenue
St. Paul, Minnesota 55104

Midway Skating Club, Inc.
2029 Juliet Avenue
St. Paul, Minnesota 55105

Midwest Challenge, Inc.
535 North 4th Street
Minneapolis, Minnesota 55401

Migrants in Action
1162 Selby Avenue
St. Paul, Minnesota 55104

Miller-Dwan Medical Center Foundation
504 East Second Street
Duluth, Minnesota 55805

Minneapolis Aerie No. 34 Fraternal Order of Eagles
2507 E. 25th Street
Minneapolis, Minnesota 55406

Minneapolis Age & Opportunity Center, Inc.
1801 Nicollet Avenue
Minneapolis, Minnesota 55403

Minneapolis Association for Retarded Citizens, Inc.
3100 West Lake Street
Minneapolis, Minnesota 55416

Minneapolis Citizens Committee on Public Education
603 Syndicate Building
84 South Sixth Street
Minneapolis, Minnesota 55402

Minneapolis Communication Center, Inc.
3010 Fourth Avenue South
Minneapolis, Minnesota 55408

Minneapolis Council of Camp Fire Girls
640 East Grand Street
Minneapolis, Minnesota 55404

Minneapolis Elks Lodge 44
528 Hennepin Avenue
Minneapolis, Minnesota 55403

Minneapolis Foundation
400 Foshay Tower
821 Marquette Avenue
Minneapolis, Minnesota 55402

Minneapolis Girls Club, Inc.
Box 12283
4209 Webber Parkway
Minneapolis, Minnesota 55412

Minneapolis Hearing Aid Society
2100 Stevens Avenue South
Minneapolis, Minnesota 55404

Minneapolis Israel Campaign
4829 Minnetonka Boulevard
Minneapolis, Minnesota 55416

Minneapolis Jaycees
515 Marquette Avenue
Room 101
Minneapolis, Minnesota 55102

Minneapolis League of Catholic Women, Inc.
207 South Ninth Street
Minneapolis, Minnesota 55402

Minneapolis Medical Research Foundation
510 Park Avenue South
Minneapolis, Minnesota 55415

Minneapolis Police Benefit Association
Room 21
City Hall
Minneapolis, Minnesota 55415

Minneapolis Regional Native American Center
1530 Franklin Avenue East
Minneapolis, Minnesota 55404

Minneapolis Rowing Club
East Lake Street and West River Road
Minneapolis, Minnesota 55406

Minneapolis Ski Club, Inc.
820 West Broadway
Minneapolis, Minnesota 55411

Minneapolis Society for the Blind
1936 Lyndale Avenue South
Minneapolis, Minnesota 55403

Minneapolis Society of Fine Arts
100 East 22nd Street
Minneapolis, Minnesota 55404

Minneapolis Urban League
1121—12th Avenue North
Minneapolis, Minnesota 55411

Minnehon Arts Center
924 Avenue South
Minneapolis, Minnesota 55402

Minnesota Accounting Aid Society, Inc.
2021 East Hennepin Avenue
Suite 370
Minneapolis, Minnesota 55413

Minnesota Arboretum Foundation
Box 132-1
Route 1
Chaska, Minnesota 55318

Minnesota Amateur Wrestling Club, Inc.
510 North Mississippi River Blvd.
St. Paul, Minnesota 55104

Minnesota Association for Children with Learning Disabilities
Griggs Midway Building
1821 University Avenue
St. Paul, Minnesota 55104

Minnesota Association of Rehabilitation Facilities
550 S. Snelling Avenue
St. Paul, Minnesota 55116

Minnesota Association for Retarded Citizens, Inc.
3225 Lyndale Avenue South
Minneapolis, Minnesota 55408

Minnesota Babe Ruth League, Inc.
Arnold N. Johnson
5833 Pennsylvania Avenue North
Minneapolis, Minnesota 54428

Minnesota Chapter of the Arthritis Foundation
122 West Franklin Avenue
Minneapolis, Minnesota 55404

Minnesota Chapter & Leukemia Campaign of the City of Hope
7462 Oxford Street
St. Louis Park, Minnesota 55426

Minnesota Chapter Lupus Foundation of America, Inc.
5209 W. 60th Street
Minneapolis, Minnesota 55436

Minnesota Charities Review Council, Inc.
730—2nd Avenue South
626 Peavey Building
Minneapolis, Minnesota 55402

Minnesota Chemical Dependency Association
1761 University Avenue
St. Paul, Minnesota 55104

Minnesota Citizens Concerned for Life
4803 Nicollet Avenue
Minneapolis, Minnesota 55409

Minnesota Citizens for the Arts
212 W. Franklin Avenue
Minneapolis, Minnesota 55404

Minnesota Chorale
4822 Folwell Drive
Minneapolis, Minnesota 55406

Minnesota Citizens Rights Fund
10 Manitoba Road
Hopkins, Minnesota 55343

Minnesota Civil Liberties Union Foundation
628 Central Avenue N.E.
Minneapolis, Minnesota 55414

Minnesota Conservation Federation
790 South Cleveland Avenue
St. Paul, Minnesota 55116

Minnesota Council on Alcohol Problems
122 W. Franklin Avenue
Minneapolis, Minnesota 55404

Minnesota Council on Foundation
712 Foshay Tower
821 Marquette Avenue
Minneapolis, Minnesota 55402

Minnesota Council for the Gifted and Talented
3521 Wyoming Avenue South
St. Louis Park, Minnesota 55426

Minnesota Council on Health
1535 Dain Tower
Minneapolis, Minnesota 55402

Minnesota Dance Theatre & School
107—4th Street S.E.
Minneapolis, Minnesota 55414

Minnesota DECA Diamond Club
c/o Minnesota Retail Federation, Inc.
131 Metro Square Building
St. Paul, Minnesota 55101

Minnesota Demolay Foundation
3954 Wooddale Avenue South
St. Louis Park, Minnesota

Minnesota Early Learning Design, Inc.
123 Grant Street
Minneapolis, Minnesota 55403

Minnesota Environmental Control Citizens Association
867 Grand Avenue
St. Paul, Minnesota 55105

Minnesota Environmental Science Foundation, Inc.
5400 Glenwood Avenue
Minneapolis, Minnesota 55422

Minnesota Epilepsy League, Inc.
529 Jackson Street
Suite 202
St. Paul, Minnesota 55101

Minnesota Foundation for Better Hearing and Speech
Bremer Arcade
Seventh and Robert Streets
St. Paul, Minnesota 55101

Minnesota Fund for Sickle Cell Anemia
919 Fremont Avenue North
Minneapolis, Minnesota 55411

Minnesota Heart Association
4701 West 77th Street
Edina, Minnesota 55435

Minnesota Humane Society
117 University Avenue
St. Paul, Minnesota 55155

Minnesota Independent School Fund, Inc.
923 Pioneer Building
St. Paul, Minnesota 55101

Minnesota International Center
711 East River Road
Minneapolis, Minnesota 55455

Minnesota Jaycees
P. O. Box 149
Chaska, Minnesota 55318

Minnesota Life-Care Center
1190 Oakdale Avenue
West St. Paul, Minnesota 55118

Minnesota Lung Association
614 Portland Avenue
St. Paul, Minnesota 55102

Minnesota Marriage Encounter, Inc.
Box 6016
St. Paul, Minnesota 55118

Minnesota Museum of Art
30 East Tenth Street
St. Paul, Minnesota 55101

Minnesota Music Theatre Company
79 Western Avenue North
St. Paul, Minnesota 55102

Minnesota North Star Chapter
Multiple Sclerosis Society
4306 West 36-1/4 Street
Minneapolis, Minnesota 55416

Minnesota Orchestral Association
1111 Nicollet Avenue
Minneapolis, Minnesota 55403
Minnesota Orchestra in Rochester

21 Second Avenue S.W.
Rochester, Minnesota 55901

Minnesota Outward Bound School
1055 E. Wayzata Boulevard
Wayzata, Minnesota 55391

Minnesota Parks Foundation
W-2200 First National Bank Building
St. Paul, Minnesota 55101

Minnesota Private College Fund
906 Northwestern Bank Building
Minneapolis, Minnesota 55402

Minnesota Press Council
P. O. Box 14116
University Station
Minneapolis, Minnesota 55414

Minnesota Public Health Association
Box 80015
Como Station
St. Paul, Minnesota 55101

Minnesota Public Interest Research Foundation
3036 University Avenue
Minneapolis, Minnesota 55414

Minnesota Public Programming Corporation
2192 Dayton Avenue
St. Paul, Minnesota 55104

Minnesota Public Radio, Inc.
400 Sibley Street
St. Paul, Minnesota 55101

Minnesota Rescue & First Aid Association
1734 North Pascal Avenue
St. Paul, Minnesota 55113

Minnesota Safety Council, Inc.
145 Hamm Building
St. Paul, Minnesota 55102

Minnesota Sheriffs Ranches
Box 249
Austin, Minnesota 55912

Minnesota Society for Crippled Children & Adults, Inc.
3915 Golden Valley Road
Golden Valley, Minnesota 55422

Minnesota Society for the Prevention of Blindness
101 E. Fifth Street
American National Bank Building
Suite 900
St. Paul, Minnesota 55101

Minnesota Span Association
103 Nolte W.
University of Minnesota
Minneapolis, Minnesota 55455

Minnesota Special Olympics, Inc.
16217 Main Avenue S.E.
Prior Lake, Minnesota 55372

Minnesota State Council on Economic Education
1169 BA Building
University of Minnesota
Minneapolis, Minnesota 55455

Minnesota State Medical Association
900 American National Bank Building
101 East 5th Street
St. Paul, Minnesota 55101

Minnesota Teamsters' Retirees Club
3001 University Avenue S.E.
Minneapolis, Minnesota 55414

Minnesota Theatre
Institute for the Deaf
1900 LaSalle
Minneapolis, Minnesota 55403

Minnesota Zoological Garden Foundation
33 E. Wentworth Avenue
Suite 218
West St. Paul, Minnesota 55118

Minnesota Zoological Society
555 Wabasha Street North
St. Paul, Minnesota 55102

Minnesota Youth Symphony, Inc.
7400 Metro Boulevard
Suite 440
Edina, Minnesota 55343

Minnetonka Center of Arts, Inc.
P. O. Box 158
Crystal Bay, Minnesota 55323

Minnetonka Choral Society
c/o Wayzata Community Church
Highway 12 and Ferndale Avenue
Wayzata, Minnesota 55391

Mission Farms Nursing Home, Inc.
3401 Medicine Lake Boulevard
Minneapolis, Minnesota 55427

Mobility Foundation
745 Pine View
North Pine, Pennsylvania 19454

Montessori Foundation of Minnesota, Inc.
355 Marshall Avenue
St. Paul, Minnesota 55102

Moorhead Jaycees
Box 115
Moorhead, Minnesota 56560

Mounds Park Hospital Foundation, Inc.
200 Earl Street
St. Paul, Minnesota 55106

Mount Olivet B.C. Environmental Learning Center, Inc.
451 W. Central Avenue
St. Paul, Minnesota 55103

Mount Sinai Hospital Women's Auxiliary
2215 Park Avenue
Minneapolis, Minnesota 55103

Multi Resource Center, Inc.
1900 Chicago Avenue South
Minneapolis, Minnesota 55404

Muscular Dystrophy Association, Inc.
810 Seventh Avenue
New York, New York 10019

NAACP—Legal Defense and Educational Fund, Inc.
10401 Cedar Lake
Minnetonka, Minnesota 55343

Narconon Minnesota
3636 Grand Avenue South No. 303
Minneapolis, Minnesota 55409

National Alarm Committee
1217 Marquette Avenue South
Minneapolis, Minnesota 55403

National Association for Speech and Hearing
814 Thayer Avenue
Silver Springs, Maryland 20910

National Association of Women Helping Offenders
8200 Humboldt Avenue South
Bloomington, Minnesota 55431

National Asthma Center, Inc.
1999 Julian Street
Denver, Colorado 80204

National Ataxia Foundation, Inc.
4225 Golden Valley Road
Minneapolis, Minnesota 55422

National Bowling Hall of Fame and Museum
5301 South 76th Street
Greendale, Wisconsin 53129

National Cancer Cytology Center, Inc.
The 110 Colonial Building
150 Broad Hollow Road
Melville, New York 11746

National Child Labor Committee
145 East 22nd Street
New York, New York 10016

National Child Safety Council
4065 Page Avenue
P. O. Box 280
Jackson, Michigan 49204

National Citizens Committee for Broadcasting
1028 Connecticut Avenue N.W.
Washington, D. C. 20036

National Conference on Christian and Jews, Inc.
43 West 57th Street
New York, New York 10016

National Council To Control Handguns
810—18th Street N.W.
Washington, D. C. 20006

National Development Foundation
1831 Morgan Avenue North
Minneapolis, Minnesota 55411

National Council on Crime & Delinquency
Continental Plaza
411 Hackensack Avenue
Hackensack, New Jersey 07601

National Council for Youth, Inc.
201 Endicott Building
St. Paul, Minnesota 55101

National Federation of the Blind
10 Light Street
Baltimore, Maryland 21202

National Federation of the Blind of Minnesota
1605 Eustis Street
St. Paul, Minnesota 55108

National Fresh Water Fishing Hall of Fame
Box 99
Hayward, Wisconsin 54843

National Foundation for Cancer Research
4706 Bethesda Avenue
Bethesda, Maryland 20014

National Foundation Inc., Minnesota Chapters
1275 Mamaroneck Avenue
Minneapolis, Minnesota 55423

National 4-H Council
150 North Wacker Drive
Chicago, Illinois 60606

National Fund for Medical Education
999 Asyllum
Hartford, Connecticut 06105

National Handicap Housing Institutes, Inc.
120 S. Sixth Street Suite 1216
Minneapolis, Minnesota 55435

National Heritage Foundation
The Heritage Building
Suite 1020
Annandale, Virginia 22003

National Indian Education Association
1115 Second Avenue South
Minneapolis, Minnesota 55403

National Information Bureau, Inc.
419 Park Avenue South
New York, New York 10016

National Jewish Hospital at Denver
3800 East Colfax Avenue
Denver, Colorado 80206

National Leukemia Association, Inc.
P. O. Box 900
Elmira, New York 11530

National Medical Fellowships, Inc.
c/o Jerry Lewis, President
250 West 57th Street
New York, New York 10019

National Parks & Conservation Association
1701 Eighteenth Street N.W.
Washington, D. C. 20009

National Reciprocal & Family
Support Enforcement Association
c/o Michael Sheahan
Cummings & Sheahan
1500 Northwestern Bank Building
St. Paul, Minnesota 55101

National Recreation & Park Association, Inc.
1601 North Kent Street
Arlington, Virginia 22209

National Right to Life Educational Foundation
P. O. Box 3153
Tulsa, Oklahoma 74101

National Society for Prevention of Blindness
79 Madison Avenue
New York, New York 10016

The National Society of the Volunteers of America
Minnesota District
5300 Glenwood Avenue
Minneapolis, Minnesota 55422

National Trust for Historic Preservation
740 Jackson Place N.W.
Washington, D. C. 20006

National Wildlife Federation
1412 Sixteenth Street N.W.
Washington, D. C. 20036

Native American Rights Fund
1506 Broadway
Boulder, Colorado 80302

Native American Scholarship Fund, Inc.
3180 Morris Drive
Palo Alto, California 94303

The Nature Conservatory
Midwest Regional Office
325 West 15th Street
Minneapolis, Minnesota 55403

Navy Marine Post 472
2709 East Lake Street
Minneapolis, Minnesota 55403

Neighborhood House Association, Inc.
179 East Robie Street
St. Paul, Minnesota 55107

Neighborhood Involvement Program, Inc.
2617 Hennepin Avenue South
Minneapolis, Minnesota 55403

Neighborhood Justice Center, Inc.
500 Laurel Avenue
St. Paul, Minnesota 55102

Neighbors, Inc.
200 Marie Avenue South
South St. Paul, Minnesota 55075

Nels Wold Chapter No. 5
Military Order of the Purple Heart of the USA, Inc.
364 Charles Avenue
St. Paul, Minnesota 55103

Neville-Lien Post 1287 VFW
117 Market Street
Winona, Minnesota 55987

New Hope Jaycees
P. O. Box 27211
New Hope, Minnesota 55427

New Hope Center
212—11th Avenue South
Minneapolis, Minnesota 55415

New Ulm Jaycees, Inc.
Box 331
New Ulm, Minnesota 56073

Norman County Township
One Fund Drive
RR2
Gary, Minnesota 56545

North Central Chapter Committee to Combat Huntington's Disease
501 Park Avenue
Minneapolis, Minnesota 55415

North Central Opera Company
5970 Cathcart Drive
Excelsior, Minnesota 55331

North Country Adventures of Minnesota
3141 Columbus Avenue South
Minneapolis, Minnesota 55407

North Country Chapter
National Paraplegia Foundation
12 S. 6th Street
Suite 1215
Minneapolis, Minnesota 55402

North Country Museum of Arts, Inc.
P. O. Box 328
Third and Court Streets
Park Rapids, Minnesota 56470

North End Community Organization
194 West Rose
St. Paul, Minnesota 55117

North End Youth Hockey Association
894 Western Avenue North
St. Paul, Minnesota 55117

Northfield Area United Fund
108 Marvin Lane
Northfield, Minnesota 55057

North Maplewood Lions, Inc.
1310 Frost Avenue
Maplewood, Minnesota 55109

North Maplewood Lioness, Inc.
1310 Frost Avenue
Maplewood, Minnesota 55109

North Ramsey (500) Lions Club
P. O. Box 17031
St. Paul, Minnesota 55117

North St. Paul Post 39
2573 East 7th Avenue
North St. Paul, Minnesota 55109

North Shore Animal League, Inc.
22 South Street
Port Washington, New York 11051

North Side Post 230
American Legion
229 West Broadway
Minneapolis, Minnesota 55411

Northeast Minnesota Lung Association
203 Courthouse
424 West Superior Street
Room 201
Duluth, Minnesota 55802

Northeast Youth Hockey Association
3424 Garfield Street N.E.
Minneapolis, Minnesota 55418

Northern Lakes Girl Scout Council, Inc.
Boy Scout Building
2031 Second Avenue East
Hibbing, Minnesota 55746

Northern Minnesota Therapeutic Camp, Inc.
Box 349
Brainerd, Minnesota 56401

Northern Pine Girl Scout Council, Inc.
200 Ordean Building
424 West Superior Street
Duluth, Minnesota 55802

Northern Youth Programs of Minnesota, Inc.
Box 193, Route 7
International Falls, Minnesota 56649

Northfield Jaycees, Inc.
P. O. Box 283
Northfield, Minnesota 55057

Northfield Chapter National Multiple Sclerosis Society
405 Black Building
Fargo, North Dakota 58102

Northside Settlement Services, Inc.
2507 Fremont Avenue North
Minneapolis, Minnesota 55411

Northside Tenants Union, Inc.
1402 West Broadway
Minneapolis, Minnesota 55411

Northwestern Tennis Association
3769 Towndale Drive
Minneapolis, Minnesota 55431

Northwestern Tennis Patrons, Inc.
485 Pillsbury
Minneapolis, Minnesota 55402

Norwegian American Historical Association
c/o Mr. Lloyd Hustredt
St. Olaf College
Northfield, Minnesota 55057

Northwood Childrens Home Society, Inc.
714 College Street
Duluth, Minnesota 55811

Norwegian American 1975
Sesquicentennial Association
45 South 7th Street
Minneapolis, Minnesota 55402

Novak-Milliren Post No. 4258 VFW
815 West 3rd Avenue
c/o Alvin Barthal
Pine City, Minnesota 55063

Oakland Cemetery Association
St. Paul, Minnesota

Occupational Training Center, Inc.
666 Pelham Boulevard
St. Paul, Minnesota 55114

Old Town Restoration, Inc.
158 Farrington Street
St. Paul, Minnesota 55102

Olmsted County Council for Retarded Citizens
1312 Seventh Street N.W.
Rochester, Minnesota 55901

Jess Omundson Post 1676 VFW
500 Washington Avenue
Detroit Lakes, Minnesota 56501

One Determined Recovering Alcoholic
St. Paul, Minnesota 55107

180 Degrees, Inc.
236 Clifton Avenue
Minneapolis, Minnesota 55403

Oneida Education Center, Inc.
357 Oneida Street
St. Paul, Minnesota 55102

Operation Brotherhood
2816—28th Avenue South
Minneapolis, Minnesota 55406

Operation Bootstrap Tanzania
Law Office Building
Fergus Falls, Minnesota 56537

Operation H.O.P.E.
Route 2
Northfield, Minnesota 55057

Opportunities Industrializations Center of America
100 West Coulter Street
Philadelphia, Pennsylvania 19144

Opportunity Workshop, Inc.
512 West 78th Street
Minneapolis, Minnesota 55423

Original Boosters Club
568 Iona Lane
St. Paul, Minnesota 55114

Orono Ensemble Theatre Guild, Inc.
Main Street
Maple Plain, Minnesota 55359

Oslo No. 2 Jr. Lodge Fund
3343 Ewing Avenue South
Minneapolis, Minnesota

Osmond Foundation, Inc.
2528 Cinnabar Lane
Salt Lake City, Utah 84121

Ours, Inc.
2414 Park Avenue South
Minneapolis, Minnesota 55404

Our House of Minnesota, Inc.
1846 Dayton Avenue
St. Paul, Minnesota 55104

Outreach Community Center, Inc.
604 Produce Bank Building
Minneapolis, Minnesota 55404

P.B.E., Inc.
(Shake your Bogey)
8100—12th Avenue South
Suite 204
Minneapolis, Minnesota 55420

Paralyzed Veterans of America, Inc.
Suite 301 W
7315 Wisconsin Avenue
Washington, D. C. 20010

A. R. Patterson VFW Post 7
1551 East Franklin
St. Paul, Minnesota 55404

Peacepipe Girl Scout Council
P. O. Box 385
Falls Arcade Building
Redwood Falls, Minnesota 56283

Pelican Rapids Jaycees
Box 67
Pelican Rapids, Minnesota 56572

People, Inc.
1245 NW National Bank Bldg.
55 E. 5th Street
St. Paul, Minnesota 55101

The People to People Health Foundation, Inc.
2233 Wisconsin Avenue N.W.
Washington, D.C. 20007

Pet Haven Inc. of Minnesota
P. O. Box 19105
Minneapolis, Minnesota 55419

Pet Pride
P. O. Box 1055
Pacific Palisades, California 90272

Perspectives, Inc.
351—2nd Street
Excelsior, Minnesota 55331

Pharm House, Inc.
1025 S.E. 6th Street
Minneapolis, Minnesota 55414

Phelps-Stokes Fund
10 E. 87th Street
New York, New York 10028

Phoenix Learning Services, Inc.
1394 Jackson Street
St. Paul, Minnesota 55117

Phoenix Residence, Inc.
502 North Prior Avenue
St. Paul, Minnesota 55104

Pillsbury Waite Neighborhood Service, Inc.
720-22 East 26th Street
Minneapolis, Minnesota 55404

Pine to Prairie Girl Scout Council
700 North Third Street
Grand Forks, North Dakota 58202

Pipestone County Post 3814 VFW
c/o Ed Forman
Box 648
Pipestone, Minnesota

Planned Parenthood Federation of America, Inc.
810 Seventh Avenue
New York, New York 10019

Planned Parenthood of Minnesota
1965 Ford Parkway
St. Paul, Minnesota 55104

Plymouth Christian Youth Center
2301 Oliver Avenue South
Minneapolis, Minnesota 55411

Plymouth Fireman's Relief Association
3025 Harbor Lane
Plymouth, Minnesota 55441

Police Officers Federation of Minneapolis
P. O. Box 15094
Minneapolis, Minnesota 55415

Nat. G. Polinsky Memorial Rehabilitation Center, Inc.
530 East Second Street
Duluth, Minnesota 55805

Ponti Peterson Post 1720 VFW
12/3rd Street
Grand Rapids, Minnesota 55744

Population Food Fund
Box 255
University Station
Grand Forks, North Dakota 58202

Prairie Public Television, Inc.
4500 South University Drive
Fargo, North Dakota 58102

Pratt School of Indiv. Instruction
c/o David Kalmbrunn
P. O. Box 614
Omaha, Nebraska 68101

Lee C. Prentice American Legion
Post No. 36
1105 North State Street
Fairmont, Minnesota 56031

Pre-School Medical Survey of Vision & Hearing
101 E. Fifth Street
Suite 900
St. Paul, Minnesota 55101

Prevention of Alcohol Problems, Inc.
4616 Longfellow Avenue South
Minneapolis, Minnesota 55407

Princeton United Fund, Inc.
c/o Mrs. Dorothy E. Kelley
103—13th Avenue North
Princeton, Minnesota 55371

Prior Lake Indoor Sport Fundraising Committee
4893 Rutledge Street S.E.
Prior Lake, Minnesota 55322

Prior Lake Post 6208 VFW
Box 116
Prior Lake, Minnesota 55372

Prodigal House, Inc.
1501 LaSalle Avenue
Minneapolis, Minnesota 55403

Program for Resident Ownership, Inc.
500 Laurel Avenue
St. Paul, Minnesota 55102

Project Concern of Minnesota, Inc.
4901 West 77th Street
Suite 105 B
Minneapolis, Minnesota 55435

Project Elan, Inc.
5231 Minnehaha Avenue
Minneapolis, Minnesota 55417

Project Environment Foundation
807 Midland Bank Building
Minneapolis, Minnesota 55401

Project Environment-Sierra Club
807 Midland Bank Building
Minneapolis, Minnesota 55401

Project Life
421 Summit Avenue
St. Paul, Minnesota 55102

Project for Pride in Living, Inc.
2516 Chicago Avenue South
Minneapolis, Minnesota 55405

Providenciales Health-Medical Center, Inc.
P. O. Box 117
Indian River, Michigan 49749

Public & Parochial School Child
Welfare Comm. of Minneapolis
Council PTA Association, Inc.
St. Anthony of Padua School
803 N.E. Second Street
Minneapolis, Minnesota 55413

Ramsey County Lung Association
674 Portland Avenue
St. Paul, Minnesota 55102

Ramsey County Opportunities
Industrialization Center, Inc.
1671 Summit Avenue
St. Paul, Minnesota 55104

Reach Out Today, Inc.
1404 Hennepin Avenue
Minneapolis, Minnesota 55403

Rasmussen Schdowski VFW Post 4020
160—2nd Avenue S.W.
Perham, Minnesota 56573

Recording for the Blind, Inc.
215 East 58th Street
New York, New York 10022

Recycling Unlimited
1352 Summit Avenue
St. Paul, Minnesota 55105

Red Lake Falls One Fund (City)
715—1st Street N.E.
Red Lake Falls, Minnesota 56750

Red Lake Falls County Rural One-Fund Drive
Red Lake Falls, Minnesota 56750

Red River Valley Post 3817
311 Demers Avenue
East Grand Forks, Minnesota 56721

Red School House, Inc.
643 Virginia Avenue
St. Paul, Minnesota 55104

Redwing YMCA
434 Main Street
Red Wing, Minnesota 55066

Redwood Falls Jaycees
P. O. Box 361
Redwood Falls, Minnesota 56383

Refuge Center for Boys
P. O. Box 494
Minneapolis, Minnesota 55440

Rehabilitation Center and Workshop, Inc.
950 Highland Avenue
Greensburg, Pennsylvania 15601

Relate, Inc.
12450 Wayzata Boulevard
Suite 307
Minnetonka, Minnesota 55343

Resident Council Services, Inc.
111 E. Franklin
Minneapolis, Minnesota 55404

The Residence, Inc.
2115 North Victoria Street
St. Paul, Minnesota 55113

Reverance for Life and Concern for People, Inc.
East Highway 212
Box 81
Granite Falls, Minnesota 56241

Rice Street Athletic Club
102 Front Avenue
St. Paul, Minnesota 55117

RISE, Inc.
8406 Sunset Road N.E.
Spring Lake Park, Minnesota 55432

River Gate Resident Council
115 South Second Avenue South
Minneapolis, Minnesota 55401

River Trails Girl Scout Council
724—1st Avenue S.W.
Rochester, Minnesota 55901

Rochester Art Center
320 East Center Street
Rochester, Minnesota 55901

Rochester Civic Theatre
Mayo Park
Rochester, Minnesota 55901

Rochester Eagles—5th District
Cancer Telethon
409—1st Avenue S.W.
Rochester, Minnesota 55901

Rochester Jaycees
212—1st Avenue S.W.
Rochester, Minnesota 55901

Rochester Juvenile Hockey Association
1632—2nd Avenue N.E.
Rochester, Minnesota 55901

Rochester Methodist Hospital
201 W. Center Street
Rochester, Minnesota 55901

Rosemount Jaycees
Box 62
Rosemount, Minnesota 55068

Roseville Central Park Foundation
1114 Woodhill Drive
Roseville, Minnesota 55113

Rotary Club of Duluth
502 West Superior Street
Duluth, Minnesota 55802

St. Croix Area United Way, Inc.
408 East Chestnut Street
Stillwater, Minnesota 55082

St. Francis Hospital Foundation, Inc.
709 South Tenth Street
LaCrosse, Wisconsin 54601

St. James Community Fund, Inc.
P. O. Box 249
St. James, Minnesota 56081

St. Joseph's Home for Children
12th Avenue South and East 47th Street
Minneapolis, Minnesota 55407

St. Joseph's Hospital Auxiliary
69 West Exchange Street
St. Paul, Minnesota 55102

St. Lawrence Men's Club
1201 S.E. 5th Street
Minneapolis, Minnesota 55414

St. Louis Park Medical Center Research Foundation
4959 Excelsior Boulevard
St. Louis Park, Minnesota 55416

St. Mary's Point Hockey & Figure Skating Association
Route 1
Lakeland, Minnesota 55043

St. Paul American Indian Center, Inc.
1001 Payne Avenue
St. Paul, Minnesota 55101

St. Paul American Indian Movement
643 Virginia Street
St. Paul, Minnesota 55103

St. Paul Area Young Men's Christian Association
475 Cedar Street
St. Paul, Minnesota 55101

St. Paul Association for Retarded Citizens, Inc.
Room 329
529 Jackson Street
St. Paul, Minnesota 55101

St. Paul Chamber Orchestra Society
302 St. Paul Building
St. Paul, Minnesota 55102

The St. Paul Civic Symphony Association
East 1500 First National Bank Building
St. Paul, Minnesota 55101

St. Paul Council of Camp Fire Girls
65 E. Kellogg
St. Paul, Minnesota 55102

St. Paul Drug Rehabilitation Center
1365 Englewood Avenue
St. Paul, Minnesota 55104

St. Paul Fire Fighters Benefit Association
1723 W. Minnehaha
St. Paul, Minnesota 55104

St. Paul Foundation
1120 N.W. Bank Building
St. Paul, Minnesota 55101

St. Paul Goodwill Industries
2543 Como Avenue
St. Paul, Minnesota 55108

St. Paul Humane Society
Beulah Lane
St. Paul, Minnesota 55108

St. Paul Humane Society Auxiliary
1630 Beechwood Avenue
St. Paul, Minnesota 55116

St. Paul Jaycees Charitable Foundation
155 Endicott Arcade
St. Paul, Minnesota 55101

St. Paul Jaycees Wives Club
1722 Lansford Lane
Mendota Heights, Minnesota 55118

St. Paul Opera Association
Minnesota Building
Suite 544
St. Paul, Minnesota 55101

St. Paul Police Retirement and Meritorious Award Fund
101 E. 10th Street
St. Paul, Minnesota 55101

St. Paul Ramsey Arts & Science Council
30 East Tenth Street
St. Paul, Minnesota 55101

St. Paul Rehabilitation Center, Inc.
319 Eagle Street
St. Paul, Minnesota 55102

St. Paul Soccer Association
1485 Upper Afton Road
St. Paul, Minnesota 55119

St. Paul Sokol Gymnastic Society
381 Michigan
St. Paul, Minnesota 55118

St. Paul Society for the Blind
216 S. Wabasha Street
St. Paul, Minnesota 55107

St. Paul Turners
643 Ohio Street
St. Paul, Minnesota 55107

St. Paul Turners Women's Auxiliary
643 Ohio Street
St. Paul, Minnesota 55107

The St. Paul Urban Coalition, Inc.
264 Metro Square Building
St. Paul, Minnesota 55101

St. Paul Urban League
401 Selby Avenue
St. Paul, Minnesota 55102

St. Therese Home, Inc.
8000 Bass Lake Road
Minneapolis, Minnesota 55428

St. Paul Scouts Drum & Bugle Corps
1352 Summit Avenue
St. Paul, Minnesota 55105

St. Peter Claver Society
375 North Oxford
St. Paul, Minnesota 55104

St. Stevens Church of Minneapolis
2211 Clinton Avenue South
Minneapolis, Minnesota 55404

Sabathani Community Center, Inc.
3801—1st Avenue South
Minneapolis, Minnesota 55408

Sacramental Encounter of Spokane
5208 S. Mohawk Drive
Spokane, Washington 99204

The Salvation Army Northern Divisional Headquarters
1516 West Lake Street
Minneapolis, Minnesota 55408

Salvation Army Minneapolis-City
Operation Divisional Headquarters
1516 West Lake Street
Minneapolis, Minnesota 55408

The Salk Institute for Biological Studies
P. O. Box 1809
San Diego, California

Sauer Memorial Home
Box 81
1635 Service Drive
Winona, Minnesota 55987

Sauk Rapids Jaycees
c/o Richard Gruber
221—8th Avenue North
Sauk Rapids, Minnesota 56379

Savage Friends of the Library & Museum
516 Sibley Street
Apartment 10
Savage, Minnesota 55378

Save the Children Federation, Inc.
48 Wilton Road
Westport, Connecticut 05880

Jo Savino Ballet National
311 Ramsey Street
St. Paul, Minnesota 55102

School of the Associate Arts
344 Summit Avenue
St. Paul, Minnesota 55102

The Scholarship Fund for Expeditions of North America
610 W. 28th Street
Minneapolis, Minnesota 55408

The Schubert Club, Inc.
201 Old Federal Building
St. Paul, Minnesota 55102

Science Museum of Minnesota
30 East 10th Street
St. Paul, Minnesota 55101

Second Amendment Foundation
Bellefield Office Park
1601—114th Street S.E.
Suite 155
Bellevue, Washington 98004

Second Southwest Corporation
619—8th Avenue S.E.
Minneapolis, Minnesota 55414

Senior Citizens Center of Greater Minneapolis
3614 Bryant Road
Minneapolis, Minnesota 55404

Senior Citizens Services, Inc.
22 North Broadway
Rochester, Minnesota 55901

Senior Federation Services
1951 University Avenue
St. Paul, Minnesota 55104

Service League of Hennepin County General Hospital
701 Park Avenue
Minneapolis, Minnesota 55415

Seton Center
57 West Tenth Street
St. Paul, Minnesota 55102

Shakopee Jaycees
Box 133
Shakopee, Minnesota 55379

Shanti House, Inc.
15 Groveland Terrace
Minneapolis, Minnesota

Sholom Home, Inc. and Sholom Home Auxiliary
1554 Midway Parkway
St. Paul, Minnesota 55108

Shop Pond Gang Club
c/o Phillip Host Olnik
1197 Autumn Street
Roseville, Minnesota 55113

Shoreview Treatment Center
355 Sherman
Suite 300
St. Paul, Minnesota 55102

Sinclair Lewis Foundation, Inc.
824 Second Street
Sauk Center, Minnesota 56378

Sioux Council, Inc.
Boy Scouts of America
305 West 14th Street
P. O. Box 837
Sioux Falls, South Dakota 57102

606 Selby, Inc. Drop In Center
606 Selby Avenue
St. Paul, Minnesota 55104

Smith Dodd Business Men's Association, Inc.
885 South Smith Avenue
St. Paul, Minnesota 55107

Society for Animal Rights, Inc.
421 South State Street
Clark's Summit, Pennsylvania 18411

South Central Minnesota Council of Camp Fire Girls
303 Front Street
Graif Building
Suite 312
Mankato, Minnesota 56001

South Robert Business Men's Club
c/o The Schreiner Accounting Service
163 W. Bernard Street
West St. Paul, Minnesota 55118

Southside Community Enterprises
2955 Bloomington Avenue
Minneapolis, Minnesota 55407

Southside Neighborhood School & Positive Learning Center
2315 Chicago Avenue South
Minneapolis, Minnesota 55404

Southern Poverty Law Center, Inc.
1001 South Hall Street
Montgomery, Alabama 36101

The Speech Rehabilitation Institution
2102 Fairway Drive
Minneapolis, Minnesota 55421

Spina Bifida Association of Minnesota
7138 Oliver Avenue South
Richfield, Minnesota 55423

Spring Hill Center
725 County Road 6
P. O. Box 288
Wayzata, Minnesota 55391

Starbuck Jaycees
P. O. Box 487
Starbuck, Minnesota 56381

Starr Commonwealth for Boys
26 Mile Road
Albion, Michigan 49224

Stillwater Data Processing Systems
West 1781 First National Bank Building
St. Paul, Minnesota 55101

Sudan Interior Mission, Inc.
Cedar Grove, New Jersey 07009

Suburban Law Enforcement Association
P. O. Box 26547
St. Louis Park, Minnesota 55426

Suburban Community Services
6800 Cedar Lake Road So.
Minneapolis, Minnesota 55410

Summit University Free Press, Inc.
100 North Oxford
St. Paul, Minnesota 55104

Summit University Teen Center
1230 Commerce Building
512 Laurel
St. Paul, Minnesota 55104

Svenska Sallokapet Foundation
2600 Park Avenue
Minneapolis, Minnesota 55407

Sylvan Booster Club
87 E. Rose Avenue
St. Paul, Minnesota 55117

Synanon Foundation, Inc.
6055 Marshall-Petaluma Road
P. O. Box 786
Marshall, California 94940

Tac Two, Inc.
3911 Pillsbury Avenue
Minneapolis, Minnesota 55409

The Robert A. Taft Institute of Government
420 Lexington Avenue
New York, New York 10017

Tapemark Charity Pro-Am
223 East Marie Street
West St. Paul, Minnesota 55118

Thanksgiving Meals on Wheels
740 East 7th Street
St. Paul, Minnesota 55106

The Theater Studio
2010 Minnehaha Avenue
Minneapolis, Minnesota 55404

Toys 'n Things Training and Resource Center, Inc.
560 Van Buren Avenue
St. Paul, Minnesota 55103

Tri State Interfaith Development Enterprise, Inc.
122 West Franklin Avenue
Minneapolis, Minnesota 55404

TRUST
4501 Colfax Avenue South
Minneapolis, Minnesota 55409

Harriet Tubman Women's Shelter, Inc.
3001 Oakland Avenue
Minneapolis, Minnesota 55407

Twin Cities Chapter—National
Society for Autistic Children, Inc.
530—2nd Avenue N.W.
New Brighton, Minnesota 55112

Twin Cities Diabetes, Inc.
West 414 Meadowbrook Medical Bldg.
6440 Excelsior Boulevard
Minneapolis, Minnesota 55426

Twin Cities International Program
for Youth Leaders & Social Work
400 Ford Hall
University of Minnesota
Minneapolis, Minnesota 55455

Twin Cities Opportunities Industrialization Center, Inc.
834 North 7th Street
Minneapolis, Minnesota 55411

Twin Cities Organization
1895 Laurel Avenue
St. Paul, Minnesota 55104

Twin Cities Tree Trust
1501—4th Street South
Minneapolis, Minnesota 55404

Twin City Area Educational Television Corp.
530—2nd Avenue N.W.
New Brighton, Minnesota 55112

Twin City Hosp. Eng. Assoc.
2315—14th Avenue South
Minneapolis, Minnesota 55404

Twin Valley Council, Inc.
Boy Scouts of America
422 Park Lane
Mankato, Minnesota 56001

Twin Cities Metropolitan Arts Alliance
Butler Square Building
Room 301
100 N. Sixth Street
Minneapolis, Minnesota 55403

UNICEF, Minnesota
55 South 8th Street
Room 200
Minneapolis, Minnesota 55402

Union City Mission
3401 Medicine Lake Boulevard
Minneapolis, Minnesota 55427

Union of Concerned Scientists
1208 Massachusetts Avenue
Cambridge, Massachusetts 02138

United Blind of Minnesota, Inc.
3614 Emerson Avenue North
Minneapolis, Minnesota 55412

United Campus Ministry
422 W. Broadway
Winona, Minnesota 55987

United Cerebral Palsy of Duluth
Ordean Building
No. 105
Duluth, Minnesota 55802

United Cerebral Palsy of Greater Minneapolis, Inc.
360 Hoover Street N.E.
Minneapolis, Minnesota 55413

United Cerebral Palsy of Minnesota, Inc.
380 S. Griggs-Midway Building
1821 University Avenue
St. Paul, Minnesota 55101

United Cerebral Palsy of Mower County, Inc.
Route 1, Box 221
Austin, Minnesota 55912

United Cerebral Palsy of Greater St. Paul, Inc.
826 Payne Avenue
St. Paul, Minnesota 55101

United Cerebral Palsy of Red River Valley, Inc.
200 South Fifth Street
Moorhead, Minnesota 56560

United Good Neighbors Fund of Grand Forks
P. O. Box 207
Grand Forks, North Dakota 58202

United Handicapped Federation, Inc.
1951 University Avenue
St. Paul, Minnesota 55104

United Hospitals, Inc.
125 West College Avenue
St. Paul, Minnesota 55102

United Hospitals Education & Research Institute
125 West College Avenue
St. Paul, Minnesota 55103

United Jewish Fund
790 So. Cleveland Avenue
Room 201
St. Paul, Minnesota 55116

United Neighborhood Ministry
2414 Park Avenue
Minneapolis, Minnesota 55404

United Negro College Fund, Inc.
500 East 62nd Street
New York, New York 10021

United Seniors, Inc.
2507 Fremont Avenue North
Minneapolis, Minnesota 55411

United Service Organization, Inc.
237 East 52nd Street
New York, New York 10022

United Social Alliance, Inc.
408 East Excelsior
Hopkins, Minnesota 55343

United States Committee for Refugees, Inc.
1625 I Street N.W.
Suite 719
Washington, D. C. 20006

United States Committee for Unicef
331 East 38th Street
New York, New York 10016

U.S. Golf Association
Golf House
Farhills, New Jersey 07931

U.S. Hockey Hall of Fame, Inc.
P. O. Box 657
Eveleth, Minnesota 55734

U.S. Navy Memorial Foundation
c/o Jenner & Block
One IBM Plaza
Chicago, Illinois 60611

United Way of Albert Lea, Inc.
139 South Broadway
P. O. Box 903
Albert Lea, Minnesota 56007

United Way of Austin, Inc.
P. O. Box 605
Austin, Minnesota 55912

Blue Earth United Way
Blue Earth, Minnesota 56013

United Way of Cass-Clay, Inc.
1516—10th Avenue North
Moorhead, Minnesota 56560

United Way of Cloquet, Inc.
c/o Shirley Abbott
1423 Jarve Road
Cloquet, Minnesota 55720

United Way of Faribault, Minnesota, Inc.
107 Central Avenue
Faribault, Minnesota 55021

United Way of Greater Duluth, Inc.
402 Ordeau Building
314 West Superior Street
Duluth, Minnesota 55802

United Way of Greater Winona Area, Inc.
306 Exchange Building
Winona, Minnesota 55987

United Way of Hastings, Inc.
Box 353
Hastings, Minnesota 55033

United Way of Hibbing, Inc.
Androy Hotel
Hibbing, Minnesota 55446

United Way of Minneapolis Area
Citizens Aid Building
404 South 8th Street
Minneapolis, Minnesota 55404

United Way of New Ulm, Inc.
Fritsche Building
New Ulm, Minnesota 56073

United Way of Northeastern Minnesota, Inc.
299 West Lake Street
Chisholm, Minnesota 55719

United Way of Olmsted County, Inc.
1312 Seventh Street N.W.
Rochester, Minnesota 55901

United Way of Red Wing, Minnesota, Inc.
417-1/2 Main Street
Red Wing, Minnesota 55066

United Way of St. Cloud Area
535 East St. German
St. Cloud, Minnesota 56301

United Way of the St. Paul Area, Inc.
333 Sibley Street
St. Paul, Minnesota 55101

United Way of St. Peter
214 West Grace
St. Peter, Minnesota 56082

United Way of Steele County
139 East Main Street
Owatonna, Minnesota 55060

United Way of Willmar, Inc.
Box 494
518 W. Litchfield Avenue
Willmar, Minnesota 56201

United Way of Worthington
1017 Third Avenue
Worthington, Minnesota 56187

United World Federalists
Minnesota Branch
718 Fourth Street S.E., No. 3
Minneapolis, Minnesota 55414

Unity Settlement Association and Trust
First Universalist Church
5000 Girard Avenue South
Minneapolis, Minnesota 55419

University of Minnesota Foundation
University of Minnesota
107 Walker Library
Minneapolis, Minnesota 55455

Upper Midwest American Indian Center
1113 West Broadway
Minneapolis, Minnesota 55411

Upper Midwest Council
Federal Reserve Bank Building
Room 140-512 Nicollet Mall Bldg.
Minneapolis, Minnesota 55402

Uptown Group Living Project, Inc.
1445 W. 34th Street
Minneapolis, Minnesota 55408

Urban Coalition of Minneapolis
1009 Nicollet Mall
Suite 300
Minneapolis, Minnesota

Urban Concerns Workshops, Inc.
Suite 222
1821 University Avenue
St. Paul, Minnesota 55104

The Variety Club Heart Hospital Association
391 East River Road
Minneapolis, Minnesota 55455

Variety Club of the Northwest
Suite 271
Hotel Radisson
45 South Seventh Street
Minneapolis, Minnesota 55402

Vietnamese Buddist Association, Inc.
1261 N. Dale Street
St. Paul, Minnesota 55117

Vietnamese Community Center
5403 Wooddale Avenue South
Edina, Minnesota 55424

Viking Council Boy Scouts of America
5300 Glenwood
Minneapolis, Minnesota 55422

Viking Jaycees
Box 1000
Sandstone, Minnesota 55072

Vinland National Center
15 S. Fifth Street
Minneapolis, Minnesota 55402

Visiting Nurse Service
250 S. 4th Street
Minneapolis, Minnesota 55415

Voluntary Action Center of the St. Paul Area
Room 418
YWCA Building
65 East Kellogg Boulevard
St. Paul, Minnesota 55101

Volunteer Braille Services
4165 West Broadway
Robbinsdale, Minnesota 55422

Volunteer Council of Willmar State Hospital
Box 1128
Willmar, Minnesota 56201

Waconia Ridgeview Hospital Foundation
500 S. Maple
Waconia, Minnesota 55387

Walker Art Center
Vineland Place
Minneapolis, Minnesota 55403

Wakota Life Care Center
34 East Moreland Avenue
West St. Paul, Minnesota 55118

Waseca Jaycees
Box 87
Waseca, Minnesota 56093

Waseca Area United Fund
c/o Larry Bondhus, Treasurer
First State Bank
P. O. Box 149
Waseca, Minnesota 56093

Washington County Historical Courthouse Foundation
Box 100
Stillwater, Minnesota 55082

The Washburn Child Guidance Center
2430 Nicollet Avenue South
Minneapolis, Minnesota 55404

Watkins United Methodist Home
175 E. Wabasha Street
Winona, Minnesota 55987

The Way Opportunities Unlimited, Inc.
1913 Plymouth Avenue North
Minneapolis, Minnesota 55411

The Wayside House, Inc.
2401 Pillsbury Avenue
Minneapolis, Minnesota 55404

Webb Foundation, Inc.
1999 Shepard Road
St. Paul, Minnesota

The Welch Center
605 Central Avenue North
Duluth, Minnesota 55807

West Central Industries, Inc.
711 Willmar Avenue East
Willmar, Minnesota 56201

West Seventh Neighborhood Center
175 South Western Avenue
St. Paul, Minnesota 55102

West Seventh Street Federation
175 South Western Avenue
St. Paul, Minnesota 55102

West Suburban Teen Clinic
478 Second Street
Excelsior, Minnesota 55331

Westbrook Area Jaycees, Inc.
456 Cedar Avenue
Westbrook, Minnesota 56183

Western Pope County Hospital District
Minnewaska Hospital
610 West Sixth Street
Starbuck, Minnesota 56381

Phyllis Wheatley Community Center, Inc.
919 Fremont Avenue North
Minneapolis, Minnesota 55411

White Bear Lake Area Jaycees
P. O. Box 8531
White Bear Lake, Minnesota 55110

The Wilderness Society
1901 Pennsylvania Avenue N.W.
Washington, D. C. 20006

Willmar Community College Foundation
Willmar Building
Box 130
Willmar, Minnesota 56201

The Constance Bultman Wilson
Center for Education & Psychiatry
Wilson Center Campus
Faribault, Minnesota 55021

Winona Young Men's Christian Association
207 Winona Street
Winona, Minnesota 55987

Winrock International Livestock
Research & Training Center
Route 3
Morriston, Arkansas 72110

Within the System
148 State Office Building
St. Paul, Minnesota 55155

Women's Advocates, Inc.
584 Grand
St. Paul, Minnesota 55102

Women's Association of the Minnesota Orchestra, Inc.
111 Nicollet Mall
Minneapolis, Minnesota 55403

Women's Civic League of Rochester, Minnesota
427 Sixth Avenue S.W.
Rochester, Minnesota 55901

The Leonard Wood Memorial for the Eradication of Leprosy
and the American Leprosy Fdn.
2430 Pennsylvania Avenue N.W.
Washington, D. C. 20037

World Changers, Inc.
314 West Second Street
Tulsa, Oklahoma 74103

World Citizens, Inc.
919 Fremont Avenue North
Minneapolis, Minnesota 55411

World Vision, Inc.
c/o United States Corp. Co.
Soo Line Building
Minneapolis, Minnesota 55402

World Wildlife Fund, Inc.
1319 Eighteenth Street N.W.
Washington, D. C. 20035

Working Opportunities for Women
YWCA
65 E. Kellogg
St. Paul, Minnesota 55101

Worthington College Foundation, Inc.
1125 College Way
Worthington, Minnesota 56187

Wyoming Lions Club
4961—233 Street
Wyoming, Minnesota 55092

Young America's Foundation
Woodland Road
Sterling, Virginia 22170

Albert Lea YMCA, Inc.
2021 West Main Street
Albert Lea, Minnesota 56007

Austin YMCA
704—1st Dr. N.W.
Austin, Minnesota 55912

YMCA-YWCA Association of Duluth
302 West 1st Street
Duluth, Minnesota 55802

YMCA of Metropolitan Minneapolis
30 South 9th Street
Minneapolis, Minnesota 55402

YMCA of Mankato, Inc.
111 Park Lane
Mankato, Minnesota 56001

YWCA of Mankato
603 S. 2nd Street
Mankato, Minnesota 56001

YWCA Association of Minneapolis
1130 Nicollet Avenue
Minneapolis, Minnesota 55403

YMCA-YWCA of Rochester Building Corporation
709—1st Avenue S.W.
Rochester, Minnesota 55901

YWCA of Rochester
709—1st Avenue S.W.
Rochester, Minnesota 55901

YMCA of St. Paul
475 Cedar Street
St. Paul, Minnesota 55101

YWCA of St. Paul
65 E. Kellogg Boulevard
St. Paul, Minnesota 55101

YMCA of Winona
207 Winona Street
Winona, Minnesota 55987

YWCA of Winona
223 Center Street
Winona, Minnesota 55987

YMCA of Worthington
211 Eleventh Street
Worthington, Minnesota 56187

Youth Emergency Service, Inc.
608—20th Avenue South
Minneapolis, Minnesota 55454

Youth Employment Project, Inc.
413 S.E. Third Avenue
Rochester, Minnesota 55901

Youth Investment Foundation
1002 Excelsior
Suite 3
Hopkins, Minnesota 55343

Youth Leadership, Inc.
122 West Franklin Avenue
Minneapolis, Minnesota 55404

UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT
GENERAL DOCKET

June 2, 1980—Copy of appellees/cross-aplnts' statement of issues in 80-1159.

June 5, 1980—MOTION cross-appellees to limit issues on cross-appeal. (W. 80-1159)

June 18, 1980—ORDER: (1) Motion to limit issues on cross-appeal is granted. Issues limited to those issues decided adversely to appellees by district court. (2) Appellees/cross-appellants' motion for remand is denied. (3) Court's order of 6/11/80 remains in effect. (w/80-1159)

Jan. 7, 1981—PUBLISHED OPINION BY JUDGE SACHS. JUDGMENT: Judgment of Dist. Ct. vacated; causes are remanded for entry of a modified injunction and further proceedings consistent with this Court's opinion. (w/1159)

Mar. 23, 1981—APPELLANTS/CROSS-appellees' notice of appeal to the Supreme Court of the United States. (w/1159)

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA
FOURTH DIVISION

Civ. No. 4-78-453

PAMELA VALENTE, et. al.,

Plaintiffs,

vs.

JOHN R. LARSON, etc., et al.,

Defendants.

PLAINTIFFS' STATEMENT OF ISSUES ON CROSS-APPEAL

Plaintiffs-cross appellees submit the following issues for consideration by the court on their cross appeal:

1. Are solicitations by charities and by other non-religious organizations within the scope of Minnesota Charitable Solicitations Act, Minn. Stat. §309.50 (1978) (as amended) *et seq.* entitled to the same high degree of protection pursuant to the first amendment as are solicitations of a religious nature?

2. Are Minn. Stat. §309.52 (1978) and consequently the entire charitable solicitation act as a whole and *id.* at §§309.52 (j)(k)(l) and (p) in particular unconstitutional on their face because they grant discretion to an administrative official to deny a license to engage in activity protected by the first amendment, whether or not the act also constitutes an establishment of religion?

3. Is the provision of the charitable solicitation act for denial, suspension, or revocation of a license for activity protected by the first amendment, Minn. Stat. §309.532 (1978), unconstitutional on its face because it grants discretion to an

administrative official to implement the denial, suspension, or revocation, whether or not the act also constitutes an establishment of religion?

4. Is the entire Minnesota Charitable Solicitation Act, Minn. Stat. §309.50 (1978) (as amended) *et seq.*, unconstitutional on its face because it lacks procedural safeguards mandated by *Freedman v. Maryland*, 380 U.S. 51, 85 S.Ct. 734 (1965), and its progeny when activity protected by the first amendment is licensed, whether or not the charitable solicitation act also constitutes an establishment of religion?

5. Do the various disclosure provisions of the charitable solicitation act especially Minn. Stat. §§309.52, 309.53, 309.54, 309.533 and 309.534(1)(b) (1978), as applied to religious solicitation impermissibly entangle the state with affairs of a church, thus constituting an establishment of religion without regard to the primary effect of the act, and is the act as a whole therefore unconstitutional on its face?

6. Do the financial disclosure provisions just mentioned as applied to a religion chill the freedom of association of its members and therefore violate the first amendment guarantees of freedom of expression and association and of free exercise of religion, and is the charitable solicitation act as a whole therefore unconstitutional on its face?

7. Does Minn. Stat. §309.414(b) (1978), which exempts churches that receive more than half of their income from members or from affiliated organizations from the operation of the act, deny to the unfavored churches the equal protection of the laws by differentially burdening the free exercise of religion and by creating distinctions among varieties of expression protected by the first amendment on the basis of their

content, and is the charitable solicitation act as a whole therefore unconstitutional on its face?

DATED: 23 May 1980

Respectfully submitted,
Law Offices of Barry A. Fisher
By: Larry J. Roberts
Robert C. Moest

UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

Nos. 80-1131 and 80-1159 September Term, 1979

PAMELA VALENTE, et al.,
Appellees,
Cross-Appellants,

vs.

JOHN R. LARSON, etc., et al.,
Appellants,
Cross-Appellees.

APPEALS FROM THE UNITED STATES
DISTRICT COURT FOR THE
DISTRICT OF MINNESOTA

This Court has before it motion of cross-appellees to limit issues on cross-appeal, and motion of appellees/cross-appellants for remand and retention of jurisdiction pending remand. In connection therewith, it is now here ordered:

1. Motion to limit issues on cross-appeal is granted. Issues limited to those issues decided adversely to the appellees by the district court.

2. Appellees/cross-appellants' motion for remand is hereby denied.

3. This Court's order of June 11, 1980, granting appellees/cross-appellants fourteen (14) days after ruling on the above motions in which to serve and file brief remains in effect.

June 18, 1980.

JUDGMENT
UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

No. 80-1131 ..... September Term, 1980

PAMELA VALENTE, et al,

Appellees,

vs.

JOHN R. LARSON, etc., et al,

Appellants.

No. 80-1159

PAMELA VALENTE, et al,

Appellants,

vs.

JOHN R. LARSON, etc., et al,

Appellees.

APPEALS FROM the United States District Court for the ..... District of Minnesota.

THIS CAUSES came on to be heard on the original designated record of the United States District Court for the ..... District of Minnesota and briefs of the respective parties and were argued by counsel.

ON CONSIDERATION WHEREOF, it is now here ordered and adjudged by this Court, that the judgment of the said Dis-

trict Court, in these causes be, and the same are hereby, vacated in accordance with the opinion of this Court.

And it is further ordered by this Court that these causes be, and they are hereby, remanded for entry of a modified injunction and further proceedings consistent with this opinion.

January 7, 1981.

UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

No. 80-1131
No. 80-1159

Pamela Valente, Larry Barber, Larry Haft,
Kimberly Korman, and Holy Spirit Association
for the Unification of World Christianity,
Appellees/Cross-Appellants,

vs.

John R. Larson, Commissioner of Securities,
Minnesota Department of Commerce; Warren Spannaus,
Minnesota Attorney General;
Individually and in Their Official Capacities,
Appellants/Cross-Appellees.

APPEAL FROM THE UNITED STATES
DISTRICT COURT FOR THE DISTRICT
OF MINNESOTA

Submitted: October 13, 1980
Filed: January 7, 1981

Before ROSS, Circuit Judge, GIBSON, Senior Circuit Judge, and SACHS,* District Judge.

SACHS, District Judge.

This is an appeal from an order of the district court for the district of Minnesota[1] permanently enjoining the enforcement of the Minnesota Charitable Solicitations Act, Minn. Stat. §§ 309.50-309.61, "as to any and all religious organizations" and also permanently enjoining utilization of certain sections of the Act "against plaintiffs and other persons claiming to be religious organizations or members thereof." In the same order the district court declared the Act to be unconstitutional as applied to religious organizations and members thereof but constitutional as applied to non-religious organizations and members thereof. The court also ruled certain enforcement sections of the Act unconstitutional as applied to persons "claiming" to be religious organizations or members thereof.

Plaintiffs are the Holy Spirit Association for the Unification of World Christianity (Unification Church) and four persons asserting membership therein and claiming the right to solicit funds for the organization. Defendants are the two state officials charged with enforcement of the Act.

Notice of appeal was filed by the defendant attorney general and the defendant commissioner of securities, department of commerce. A cross-appeal was filed by plaintiffs, complaining of the ruling that the Act was valid as to non-religious organizations. Because plaintiffs were wholly successful in obtaining an injunction prohibiting enforcement of the Act against them, the cross-appeal will be considered only insofar as the issues decided may be pertinent to ruling on the appeal.

We are in general agreement with most of the basic conclusions of Judges Lord and Renner, and affirm those rulings. We disagree, however, with some aspects of the disposition of the case, and remand for further proceedings.

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* The Honorable Howard F. Sachs, United States District Judge for the Western District of Missouri, sitting by designation.

[1] The Honorable Miles W. Lord, United States District Judge. Judge Lord's order followed the recommendation of former magistrate, now United States District Judge, the Honorable Robert G. Renner.

All parties agree that the major legal issue in this case is whether the classification made in a religious exemption contained in the Act is invalid because of its unequal application to different religious organizations. We agree with the judges below that the classification is invalid and that the exemption should be expanded to cover all religious organizations.

Contained in the Act is an exemption from certain registration and disclosure requirements for

> [a] religious society or organization which received more than half of the contributions it received in the accounting year last ended (1) from persons who are members of the organization; or (2) from a parent organization or affiliated organization; or (3) from a combination of the sources listed in clauses (1) and (2). Minn. Stat. § 309.515(1)(b).

Subject to exceptions not material at this time,[2] religious organizations qualifying for the exemption need file neither a registration statement, § 309.52, nor an annual report-financial statement, § 309.53, with the securities division of the department of commerce. All other provisions of the Act apply irrespective of any exemption from registration and filing annual statements.

The court below initially granted plaintiffs' motion for a preliminary injunction and denied defendants' motion to dismiss. Plaintiffs then moved for summary judgment, seeking final ruling that the Act was unconstitutional. Plaintiffs assert that the Act is unconstitutional on its face and as applied to the solicitation of funds by members of a religious or non-

[2] The religious exemption cannot be invoked if the organization employs a professional fund raiser, § 309.515(2), or has had its exempt status revoked by the department of commerce, § 309.515(3).

religious organization.[3] Defendants resisted the motion and filed a cross-motion for partial summary judgment, contending that certain of plaintiffs' challenges were not justiciable.

We affirm the district court's ruling that the plaintiffs have standing to assert the facial invalidity of the Act, including the classification made in the religious organization exemption.

> Given a case or controversy, a litigant whose own activities are unprotected may nevertheless challenge a statute by showing that it substantially abridges the First Amendment rights of other parties not before the court [citations omitted]. In these First Amendment contexts, the courts are inclined to disregard the normal rule against permitting one whose conduct may validly be prohibited to challenge the proscription as it applies to others because of the possibility that protected speech or associative activities may be inhibited by the overly broad reach of the statute. *Village of Schaumburg v. Citizens for a Better Environment*, 444 U.S. 620, 634 (1980).

In *Schaumburg*, as in the case at bar, there was "an unresolved factual dispute concerning the true character of [plaintiff] organization." l.c. 633. Thus, regardless of the ultimate determination of plaintiffs' status (religious or non-religious), the nature of the statute called into question by plaintiffs and the nature of their challenge gives them standing to maintain suit.

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[3] In the district court and on appeal there has been wide-ranging discussion of constitutional issues. This Court has entered an order limiting consideration of issues on appeal. Recognizing the gravity of constitutional adjudications, our decision is confined to the major substantive issue set forth above, and the matters expressly discussed in this opinion. While not prejudging any other issues, we note Judge Renner's comments that the Act has been in effect since 1961, that religious organizations were exempt prior to 1978, and that the legislation has operated without any other controversy requiring judicial interpretation or validation.

We need not in this case decide whether it would be valid to divide religious organizations, like fraternal, patriotic, social, educational, alumni, professional, trade, or learned societies, § 309.515(1)(d), into two classifications: groups funded *solely* from internal sources and groups funded partly or wholly from public solicitations. Membership funding may have built-in safeguards and opportunities for informing contributors whereas solicitation from the public, lacking such safeguards, arguably needs greater public disclosure. The sticking point in this case is the unique classification dividing religious organizations between (1) groups relying primarily on internal funding but also possibly obtaining large amounts and percentages of income from public funding from (2) groups which look to the public for "more than half" of their funding.

We turn to the constitutional implications of this disparate treatment of religious sects. The First Amendment to the Constitution of the United States provides that "Congress shall make no law respecting an establishment of religion . . ." Some forty years ago it was ruled that this clause applies to state legislative enactments as well as to federal action. *Cantwell v. Connecticut*, 310 U.S. 296, 303 (1940). In the landmark Establishment Clause decision it was thereafter stated:

> The "establishment of religion" clause of the First Amendment means at least this: Neither a state nor the Federal Government can set up a church. Neither can pass laws which aid one religion, aid all religions, or prefer one religion over another . . . [The] Amendment requires the state to be a neutral in its relations with groups of religious believers and non-believers . . . State power is no more to be used so as to handicap religions than it

> is to favor them. *Everson v. Board of Education*, 330 U. S. 1, 15, 18 (1947).

It has been stated as a fundamental proposition that "[t]he government must be neutral when it comes to competition between sects." *Zorach v. Clauson*, 343 U.S. 306, 314 (1951).

The nondiscrimination principle, in the religious context, has been formulated by the second Justice Harlan as follows:

> In any particular case the critical question is whether the scope of the legislation encircles a class so broad that it can be fairly concluded that (all groups that) could be thought to fall within the natural perimeter (are included). *Welsh v. United States*, 398 U.S. 333, 357 (1970—concurring opinion), citing *Walz v. Tax Comm'n*, 397 U.S. 664, 696 (1970—separate opinion).

It is most difficult, if not impossible, in the present case to ascertain any basis for holding that the separate treatment of various religious organizations in the exemption provision of the Act follows any "natural perimeters" of public policy concerns. The need for public information would seemingly apply equally to religious organizations obtaining 40 and 60 percent of their funding from the public. It is not difficult to imagine a situation in which a religious organization which obtains 40 percent of its funding from the public obtains a substantially higher dollar amount from the public than does a religious organization which obtains 60 percent of its funding from the public. The special burdening of the latter group is in question.

The statutory discrimination between such organizations smacks of "religious gerrymandering,"[4] an apparently inten-

[4] The term is used in *Gillette v. United States*, 401 U.S. 437, 452 (1971) to describe a "subtle departure from neutrality" between sects. In the present case, the departure from neutrality may be less than "subtle" in nature—as will be shown, it has been quickly recognized by most judges who have viewed this type of legislation.

tional favoritism for the religious organizations obtaining some but less than half of their funds from the public. As further discussed, it may be inferred that the draftsmen of this legislation wished to reduce the burdens otherwise imposed on well-established churches which had achieved strong but not total financial support from their members; the draftsmen have exhibited less concern for easing regulations applicable to churches which are new and lacking in a constituency, or which, as a matter of policy, may favor public solicitation over general reliance on financial support from members. Actual discrimination exists if, as we assume, there are church organizations in both categories; intentional discrimination is a very real issue, in the absence of any explanation for the sizable loophole created for some religious organizations.

We would be somewhat more comfortable with our conclusion if the record reflected, or judicial notice could ascertain, that there are in fact specific denominations in the category of churches receiving substantial public funding, amounting however to less than half their income. All other judges who have viewed this issue (the federal judges in Minnesota and three tiers of state court judges in North Carolina, *Heritage Village Church and Missionary Fellowship, Inc. v. State of North Carolina*, 40 N.C.App. 429, 253 S.E.2d 473 (1979) and 299 N.C. 399, 263 S.E.2d 726 (1980)), have assumed or taken judicial notice that there are such churches. In the absence of argument to the contrary from the state officials here, we make the same assumption and conclude that real discrimination exists.

The inexplicable religious classification in the present case would seem dispositive, if the Court is bound to apply the "ringing phrases" of *Everson*,[5] the *Zorach* insistence on neu-

[5] Justice Blackmun's characterization, in his dissenting opinion as Circuit Judge in *In re Weitzman*, 426 F.2d 439, 448 (8th Cir. 1970).

trality, and the Harlan test of uniformity in classification. We look to further recent cases, however, for confirmation of our direction, because we recognize that the *Everson* and *Zorach* statements appeared in decisions which rejected Establishment Clause challenges.

The Supreme Court has developed a three-prong test which constitutes a "convenient, accurate distillation" of its "efforts over the past decades to evaluate a wide range of governmental action challenged as violative of the constitutional prohibition against laws 'respecting an establishment of religion,' and thus [has] provide[d] the proper framework of analysis for the issues presented in the case before us." *Meek v. Pittenger*, 421 U.S. 349, 358 (1975).

> First, the statute must have a secular legislative purpose. E.g., *Epperson v. Arkansas*, 393 U.S. 97. Second, it must have a "primary effect" that neither advances nor inhibits religion. E.g., *School District of Abington Township v. Schempp*, 374 U.S. 203. Third, the statute and its administration must avoid excessive government entanglement with religion. E.g., *Walz v. Tax Comm'n*, 397 U.S. 664.

Meek restates tests first announced in *Lemon v. Kurtzman*, 403 U.S. 602, 612-3 (1971). The *Lemon* tests have become general standards, frequently applied. *Stone v. Graham*, —— U.S. ——, 101 S.Ct. 192 (1980).

There can be little question that the Minnesota Act, viewed as a whole, has a valid secular purpose. The legislative intent underlying the measure appears from the face of the Act to be the prevention of fraudulent and deceptive conduct in the solicitation of funds in the name of charity and the disclosure of facts which may be useful to the public, when evaluating such solicitations. *See Heritage Village Church and Mis-*

sionary Fellowship, Inc. v. State of North Carolina, supra, 263 S.E.2d at 731 (N.C. 1980). Such purpose is within the ambit of the state's police power.

The exemption provision of the Act, § 309.515, without considering the detailed classifications, also appears generally to serve the valid purpose of freeing from regulation certain organizations for which public disclosure of funding would not significantly enhance the availability of information to contributors. Among the groups exempted, as mentioned above, are those such as patriotic and fraternal societies which limit solicitation to voting members and certain charitable organizations which do not solicit in excess of $10,000 annually from the public. The safeguards attending membership funding have been mentioned; the small annual dollar amount collected by the exempted charitable organizations, in combination with the other requirements expressed in the provision, such as the use of volunteer solicitors, may be said to offset the legislatively perceived need for public disclosure at the state level. Educational institutions which are supervised by a state board or a national accrediting asociation are exempted; private foundations which solicit from fewer than 100 persons are exempted; and charitable organizations which solicit for a person named at the time of solicitation and which transfer all funds without restriction to that person are also exempted. A valid, secular legislative purpose may be discerned for each of these exemptions.

No such sound and justifiable purpose can be found in the system of classifying religious organizations. On the contrary, as previously suggested, the exemption of organizations which conduct substantial public solicitations, if such solicitations account for less than half of the organization's income, appears to be designed to shield favored sects, while continuing

to burden other sects. The classification has no ascertainable "secular legislative purpose" and does not survive the first portion of the *Lemon* test.

The defendants, relying on *Gillette v. United States*, 401 U. S. 437 (1971), urge that a generally valid secular purpose, such as the avoidance of unnecessary regulation, defeats an Establishment Clause challenge to a statute, even though the burdens may fall more heavily on certain religious groups. Petitioners in *Gillette* claimed exemption from military service under § 6(j) of the Military Selective Service Act which exempted from service in the armed forces any person "who, by reason of religious training and belief, is conscientiously opposed to participation in war in any form." Petitioners challenged the section as violative of the Free Exercise and Establishment Clauses. Petitioners' contention was that "the special statutory status accorded conscientious objection to all war, but not objection to a particular war, works a de facto discrimination among religions." l.c. 451-52. For example, it was argued that some religious faiths distinguish between "just" and unjust" wars. 401 U.S. at 452, 470 (dissent). Thus it was said that some conscripts might be forced to serve in violation of religious scruples, whereas a member of another sect, having more generalized objections toward all wars, would be exempted from service. Having found that the statute on its face did not discriminate on the basis of religious affiliation, the Supreme Court considered whether there had been some subtle departure from governmental neutrality. In determining that there had been no such departure, the Supreme Court found that petitioners had failed to make the requisite showing of the absence of a neutral, secular basis for the line drawn between objectors to all wars and objectors to a particular war. l.c. 452. The Court sustained the legislative exemption, rely-

ing on the difficulty of devising a standard to cover a "virtually limitless variety of beliefs," petitioners' failure to articulate a feasible scheme of exemption, and the increased danger of government entanglement with religion and of erratic decisionmaking if a broadened exemption were devised. l.c. 453-58.

Defendants' reliance on *Gillette* is clearly misplaced. The challenged statute in this case expressly separates two classes of religious organizations and makes the separation for no valid secular purpose that has been suggested by defendants. Inexplicable disparate treatment will not generally be attributed to accident; it seems much more likely that at some stage of the legislative process special solicitude for particular religious organizations affected the choice of statutory language. The resulting discrimination is constitutionally invidious.

If it be necessary to apply the second part of the *Lemon* test to the exemption provision of the Act, we conclude that a significant effect of the classification made within the religious exemption section could be to assist (by deregulation) certain religious groups, while burdening others. The benefit conferred on religious organizations that do not fall subject to the registration and disclosure requirements of the Act constitutes a substantial advantage; the burden of compliance with the Act is certainly not *de minimis*.

The registration section, § 309.52, requires, prior to any solicitation, that groups subject to the Act file with the state a detailed registration statement on forms provided by the state.[6] Providing the items of information listed in the statute

[6] § 309.52 Registration requirement
Subdivision 1. No charitable organization, except as otherwise provided in section 309.515, shall solicit contributions from persons in this state by any means whatsoever unless, prior to any solicita-

is not an insignificant undertaking, especially in view of the open-ended provision of subsection (p) for "[s]uch other information as the department may . . . require . . ." A group filing for the first time must provide, in addition to the registration statement, "a financial statement of its operation for its most recent 12 months." § 309.52(2).

The financial statement expected of first-time filers becomes an annual obligation under § 309.53, which mandates an annual report on state forms accompanied by a financial

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tion, there shall be on file with the department upon forms provided by the department, a registration statement containing, without limitation, the following information:

(a) Legally established name.

(b) Name or names under which it solicits contributions.

(c) Form of organization.

(d) Date and place of organization.

(e) Address of principal office in this state, or, if none, the name and address of the person having custody of books and records within this state.

(f) Names and addresses of officers, directors, trustees, and chief executive officer.

(g) Federal and state tax exempt status.

(h) Denial at any time by any governmental agency or court of the right to solicit contributions.

(i) Date on which accounting year of the charitable organization ends.

(j) General purposes for which organized.

(k) General purposes for which contributions to be solicited will be used.

(l) Methods by which solicitation will be made.

(m) Copies of contracts between charitable organization and professional fund raisers relating to financial compensation or profit to be derived by the professional fund raisers. Where any such contract is executed after filing of the registration statement, a copy thereof shall be filed within seven days of the date of execution.

(n) Board, group or individual having final discretion as to the distribution and use of contributions received.

(o) The amount of total contributions received during the accounting year last ended.

(p) Such other information as the department may by rule or order require to promote fairness of the solicitation and to assure full and fair disclosure of all material information to the department.

* * *

Subd. 2. The first registration statement filed by a charitable organization shall include a financial statement of its operation for its most recent 12 month period immediately preceding the filing of the first registration statement.

* * *.

statement.[7] Such statements must contain the following: total receipts and income; costs of management, fund raising, and public education; and funds transferred out of the state and remaining within the state with a breakdown of disbursement or dedication. In the words of another court considering a substantially equivalent statute,

> However commendable as a sound business practice, such an audit does not spring full blown without considerable

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[7] § 309.53 Annual report

Subdivision 1. Except as otherwise provided in subdivision 1a of this section, every charitable organization required to file a registration statement pursuant to section 309.52 shall file an annual report with the department of commerce upon forms provided by the department or on forms identical thereto on or before June 30 of each year if its books are kept on a calendar year basis. For cause shown the department may extend the time for filing the annual report for a period not to exceed three months.

Subd. 2. Such annual report shall include a financial statement covering the immediately preceding 12 months period of operation, and shall be executed by any two duly constituted officers of the charitable organization, who shall acknowledge that it was executed pursuant to resolution of the board of directors or trustees, or if there be no such board, then by its managing group which has approved the content of the annual report.

Subd. 3. The financial statement shall include a balance sheet, statement of income and expense, and statement of functional expenses, shall be consistent with forms furnished by the department, and shall be prepared in accordance with generally accepted accounting principles so as to make a full disclosure of the following, including necessary allocations between each item and the basis of such allocations:

(a) Total receipts and total income from all sources;

(b) Cost of management and general [sic];

(c) Cost of fund raising;

(d) Cost of public education;

(e) Funds or properties transferred out of state, with explanation as to recipient and purpose;

(f) Total net amount disbursed or dedicated within this state, broken down into total amounts disbursed or dedicated for each major purpose, charitable or otherwise;

(g) Names of professional fund raisers used during the accounting year and the financial compensation or profit resulting to each professional fund raiser. Unless otherwise required by this subdivision, the financial statement need not be certified.

* * *.

expense and administrative coordination.[8] *Heritage Village and Missionary Fellowship, Inc. v. State of North Carolina*, supra, 263 S.E.2d at 733 (N.C. 1980).

It is manifest that certain religious groups will suffer material burdens as a result of the obligations imposed by the Act and that certain other religious groups, not subject to the Act by virtue of the predominance of membership funding, will enjoy complete exemption from the demands of registration or disclosure. We must conclude that the Minnesota statute prefers some religions over others. Such preference is in conflict with the amendment prohibiting establishment of religion by law, in the absence of compelling secular justifications like those sustained in *Gillette*.

In light of our conclusion that the classification made in Minn. Stat. § 309.515(1)(b) significantly burdens some religious groups and has no saving secular purpose, we need not examine the exemption for excessive government entanglement with religion, the third consideration in the Supreme Court's frame work of Establishment Clause analysis.

Having approved of the district court's major holding, invalidating the religious classifications in the exemption section of the Act, we further conclude that the decision below is sound in its determination that all sects are entitled to claim

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[8] Defendants belittle the authority of the North Carolina litigation, pointing to the close division of judges on the North Carolina Supreme Court. We are impressed, however, that the trial judge (now Judge Ervin of the United States Court of Appeals for the Fourth Circuit) and the intermediate appellate court (in an opinion authored by a present United States District Judge) anticipated the majority ruling of the North Carolina Supreme Court. First Amendment jurisprudence is a responsibility of state court judges as well as federal judges. While our analysis differs somewhat from the rationale of the North Carolina courts, at least in form, we acknowledge that we are strengthened in our conclusion by the North Carolina resolution of issues which are essentially identical with those at bar.

the religious organization exemption, disregarding the invalid classification. It would be logically possible to strike the entire religious exemption as unconstitutional, rather than enlarge the exemption to cover all religious organizations. We believe the district court exercised good judgment, in accordance with probable legislative intent, in selecting the least disruptive method of editing the Act to eliminate an unconstitutional provision.

Under the rule of severability (Minn. Stat. § 309.61) the surviving provision in the exemption section will comprehensively apply to "a religious society or organization." We recognize that the resulting legislative scheme could be questioned as favoring all religious organizations over others. In light of the traditional governmental reluctance to intrude unnecessarily in the affairs of religious organizations, and the absence of parties ready to litigate the issue posed, we do not question the broadened exemption provision.

Contrary to an assumption made below in dealing with the intricacies of this rather complex statute, the exemption does not apply to the entire Act. Portions of the Act still literally apply to religious organizations.[9] The injunction is thus overly broad. In the absence of full consideration and final rulings below, we do not discuss possible constitutional issues regarding the remaining sections, as applied to all religious organizations. A cautious approach to such issues is mandated by *NLRB v. Catholic Bishop of Chicago*, 440 U.S. 490 (1979). *Note however, Christian Echoes National Ministry, Inc. v. United States*, 470 F.2d 849 (10th Cir. 1972), cert. denied, 414

[9] For example, deceptive names and practices are forbidden, the sale of contributor lists is forbidden, and solicitors must supply tax deductibility information to contributors. Minn. Stat. §§ 309.55 (1)(5)(6), 309.556(b).

U.S. 864 (1973); *Securities and Exchange Commission v. World Radio Mission, Inc.*, 544 F.2d 535 (1st Cir. 1976); *In re Rabbinical Seminary*, 450 F. Supp. 1078 (E.D.N.Y. 1978), for applicability of disclosure requirements to the financial and political activities of religious organizations.

The validity of the regulation of all charitable solicitation as such need not be closely considered at this time to determine if the dicta favorable to such regulation in *Village of Schaumburg*, supra at 637-8, is sound and controlling here. The views of the district court on this subject were expressed without benefit of the *Schaumburg* decision. In any event, on remand, the parties will have an opportunity to focus their contentions on these and other provisions of the Act which have received only marginal attention, and will have the guidance of *Schaumburg* in making such examination.

The ruling that plaintiffs and others "claiming" to be religious organizations should enjoy the religious exemption and should be free from all regulation under the Act does not appear to be justified, and that much of the injunctive order is also disapproved. A "bare assertion . . . without the production of any evidence . . . is simply not sufficient to sustain [an] assertion that [the Unification Church] is a religious organization." *United States v. Berg*, No. 80-1432 (8th Cir., December 8, 1980). Plaintiffs' claims should not be accepted without inquiry. The parties should have an opportunity to develop the record and obtain rulings below. It may be observed, hwoever, that a considerable burden is on the state, in questioning a claim of a religious nature. Strict or narrow construction of a statutory exemption for religious organizations is not favored. *Washington Ethical Society v. District of Columbia*, 249 F.2d 127, 129 (D.C. Cir. 1957, Burger, J.). Judicial determination of religious sincerity and status is a most sensitive undertaking, but is not without

precedent. *Gillette*, supra at 457, (whether a belief is "truly held" is open to question, the "truth of a belief" is not); *Wisconsin v. Yoder*, 406 U.S. 205, 219-29 and 235 (1972) (sincerity of religious belief demonstrated by conduct); *Founding Church of Scientology v. United States*, 409 F.2d 1146, 1162 (D.C.Cir. 1969), cert. den., 396 U.S. 963 (1969) (declining to hold summarily that plaintiff is a religion; claim of religious status is subject to contradiction by showing of insincerity of beliefs). Cf. *Walker v. Wegner*, 477 F. Supp. 648, 652 (D.S.D. 1979) (preliminary injunction granted against a statutory scheme involving *administrative* determination of "whether a particular cause is religious"), affirmed on other grounds, 624 F.2d 60 (8th Cir. 1980).

In summary, we agree with the district court's holding that plaintiffs have standing to challenge the classification made in the exemption section of the Act, as it pertains to religious organizations; we agree with the court's invalidation of the classification made in that section; we agree that the exemption section should apply to all religious organizations, subject to possible legislative revision; we disagree with the conclusion that no part of the Act may be applied to religious organizations, but leave open questions of construction and validity for further development, including the application of the Act to charitable organizations; and we disagree with the conclusion that plaintiffs and others claiming the religious exemption should automatically enjoy such exemption, but leave open the question of plaintiffs' status for further development.

The judgment below is vacated and the cause remanded for entry of a modified injunction and further proceedings consistent with this opinion.

A true copy.

Attest:

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No. 80-1666
IN THE

Supreme Court of the United States

October Term 1980

JOHN R. LARSON, etc., *et al.*,

Appellants,

vs.

PAMELA VALENTE, *et al.*,

Appellees.

On Appeal From the United States Court of Appeals for the Eighth Circuit.

MOTION TO AFFIRM.

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Questions Presented.

1. Whether appellees, plaintiffs in the district court, have standing to challenge on establishment clause grounds a Minnesota statute which has been applied to them and which therefore injures them in fact.

2. Whether the church exemption provision of the Minnesota Charitable Solicitations Act, which on its face subjects some churches but not others to a series of onerous burdens required by the substantive provisions of the Act, thus favoring some churches over others, violates the establishment clause of the first amendment.

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No. 80-1666

IN THE

Supreme Court of the United States

October Term 1980

JOHN R. LARSON, etc., *et al.*,

Appellants,

vs.

PAMELA VALENTE, *et al.*,

Appellees.

MOTION TO AFFIRM.

Appellees, pursuant to rule 16.1(c) of the Rules of the Supreme Court of the United States, move that the judgment of the United States Court of Appeals for the Eighth Circuit be affirmed on the ground that it is manifest that the questions on which the decision of the cause depends are so unsubstantial as not to need further argument.

Statement of the Case.

1. The Proceedings Below.

The present action, brought pursuant to 42 U.S.C. §1983 (1976), sought a declaration that the Minnesota Charitable Solicitations Act, Minn.Stat. §§309.50-.61 (1980) [hereinafter sometimes cited as the Act] is unconstitutional as violative of the first and fourteenth amendments and an

injunction against its enforcement.[1] Plaintiffs in the action as originally filed were four individual members of the Holy Spirit Association for the Unification of World Christianity [the Unification Church or the Church]. Named as defendants were the two Minnesota officials charged with the enforcement of the Act, John R. Larson, the Commissioner of Securities, and Warren Spannaus, the Attorney General [hereinafter collectively referred to as the state].

The complaint was filed on October 11, 1978. At the same time, plaintiffs filed a motion for preliminary injunction against enforcement of the Act. Defendants-appellants [hereinafter referred to as appellants] opposed the motion on the merits and also filed a motion to dismiss, or, in the alternative, to join the Unification Church as a party. After the federal complaint had been filed, but before the preliminary injunction had been heard, the State of Minnesota filed an action in state court against the Church, alleging that the latter was in violation of certain provisions of the Act. Prior to the hearing, the parties entered into a stipulation whereby the Unification Church was joined as a plaintiff to the federal action and the state action was stayed.

The preliminary injunction motion was heard on January 25, 1979 by Magistrate (now Judge) Renner. On March 5, 1979 the magistrate filed his Report and Recommendation which concluded that the motion should be granted. Jur. St. A-36. Appellants immediately filed objections to the Report

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[1]Apart from the establishment clause issue determined by the court of appeals, appellees raised in the district court numerous other constitutional challenges to the Act. They argued, for example, that the Act vested impermissible discretion in state officials to grant, deny, revoke or suspend permission to engage in the exercise of first amendment rights; failed to conform to required first amendment due process safeguards; violated the equal protection clause; violated the free exercise clause by overbroad intrusion into the financial affairs of churches; and contained a variety of other constitutionally impermissible restrictions on the exercise of first amendment rights. Under the terms of the Eighth Circuit decision, litigation of these issues on remand to the district court is open.

and Recommendation and moved that it be rejected by the court. An additional hearing was thereafter held before Judge Lord, and on July 5, 1979 the court filed an order upholding the magistrate's conclusions. *Id.* A-35.

A motion for summary judgment was then made by plaintiffs-appellees [hereinafter referred to as appellees] in which it was contended that the Act was unconstitutional. Appellants responded by themselves moving for partial summary judgment.

The new set of motions was heard by Magistrate Renner on August 31, 1979. The Report and Recommendation, issued on November 15, 1979 recommended that both motions be granted in part and denied in part. *Id.* A-20. The major conclusion of the Report was that, because the exemption provision works an establishment of religion, the Act is "unconstitutional as applied to religious organizations and members thereof" and that its enforcement should be permanently enjoined as to such organizations. *Id.* A-34. Other rulings in the Report concerned the application of the Act to non-religious organizations and the constitutionality and justiciability of various enforcement provisions of the Act. *Id.*

Defendants again objected to the magistrate's conclusions. For their part, plaintiffs challenged the Report and Recommendation only insofar as it subsidiarily had concluded that a sharp distinction should be drawn for constitutional purposes between solicitation by religious organizations and by non-religious charitable organizations.[2] By order dated January 9, 1980 and filed January 21, 1980 the district court granted judgment as recommended by Magistrate Renner. *Id.* A-18.

In an opinion dated January 7, 1981, *id.* A-1, the Eighth Circuit generally upheld the judgment of the trial court.

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[2]By order the appellees were precluded from raising this issue in the court of appeals.

Specifically, the court of appeals held, first, "that plaintiffs have standing to challenge the classification made in the exemption section of the Act" pertaining to religious organizations. *Id.* A-4, 637 F.2d 562, 571 (8th Cir. 1981). Second, the exemption provision was held to be unconstitutional as an establishment of religion because it lacked both a secular purpose and a neutral effect. *Id.* A-5 to A-14, 637 F.2d at 567-69. Third, the proper relief was held to be an extending the exemption provision to all churches rather than excising it entirely from the Act. *Id.* A-15, 637 F.2d at 570.

Only the conclusions that no part of the Act could be applied to a church and that any organization claiming to be a church should be exempt were vacated and remanded for "further development". *Id.* A-17, 637 F.2d at 571. Under the latter holding the state is apparently free to attempt to prove that the Unification Church is not a "religious organization", *id.* A-16, 637 F.2d at 570, within the perimeters of this Court's decisions and those of *Washington Ethical Society v. District of Columbia*, 249 F.2d 127 (D.C. Cir. 1957), which the Eighth Circuit carefully noted, *id.* A-17, 637 F.2d at 570-71.

The lower courts were thus unanimous in their agreement on what is for present purposes the central issue of the case, that the exemption provision works an establishment of religion. Appellees prevailed in their critical claim that the onerous provisions of the Act cannot be applied to them, as they have no doubt whatsoever that they will prevail should the state undertake to prove that the Unification Church is not a religious organization, and they do not cross-appeal or seek to disturb the judgment of the court of appeals.

2. The Statutory Scheme.

Prior to 1978 the Minnesota Charitable Solicitations Act, now Minn.Stat. §§309.50-.61 (1980), in effect exempted all religious solicitations from its requirements, as was and

is the general practice of states which regulate these matters.[3] This condition of benign neglect was drastically altered by the amendments enacted by 1978 Minn. Laws. ch. 601, which among other things applied the substantive provisions of the Act to churches, a change which, however, was not across-the-board. With minor exceptions the only churches not exempted from the amended Act are those which derive their financial support primarily from appeals to the public rather than from their own members. Those churches included within the Act's requirements are subject to a process of registration and detailed financial accounting to the state. The Act, in addition, permits exhaustive official investigation of the inner workings of churches which solicit funds within Minnesota.

Thus, the radical effect of the 1978 amendments was to require the state to exercise close scrutiny and careful supervision over some, but not all, churches which seek to raise money for purely religious purposes. A long-existing church or religious society with a large, permanent membership is, in effect, exempt from the onerous burdens of the Act even if it solicits a substantial amount of money from the public. Similarly, a new branch of a church which can turn to sister organizations of the same denomination in its early years will also escape these burdens. In contrast, a newly-established church which has little or no source of financial support other than the public at large is subjected to the full weight of the Act's comprehensive regulatory scheme.

Although appellees attacked the Act as a whole and on numerous grounds in the trial court, only those portions of it that relate to the exemption of churches were considered

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[3]Besides Minnesota only North Carolina seems to have adopted the selective regulation at issue in this case. Both laws have now been held to be unconstitutional by an impressive number of judges. See Jur. St. A-14 n.8, 637 F.2d at 569 n.8. That any other states would choose to follow this model in light of its thorough condemnation is unlikely.

by the court of appeals and are drawn in question by appellants here. The requirements of the Act apply to all "charitable organizations" except those exempted by section 309.515. The burdens imposed upon non-exempt organizations include the filing of a detailed registration statement under section 309.52 before any solicitation may take place. Each organization subjected to the Act must file an annual report pursuant to section 309.53, which must disclose extensive financial information and, most likely, be audited.

A "charitable organization" is defined by section 309.50(4) as any person or organization "who engages in or purports to engage in solicitation for a charitable purpose". The term "charitable purpose" is in turn defined by section 309.50(3) specifically to include "any . . . religious . . . purpose, either actual or purported." Thus, a "charitable organization" within the meaning of section 309.414(1)(a) includes any organization which engaged in solicitation for a religious purpose, *i.e.*, virtually any religious organization or church.

From the class of all churches, section 309.515(1)(a) exempts those that receive total contributions worldwide of less than $10,000 and whose administration and clergy receive no money from the fund raising efforts. But also exempt is

> [a] religious society or organization which received more than half of the contributions it received in the accounting year last ended (1) from persons who are members of the organization; or (2) from a parent organization or affiliated organizations; or (3) from a combination of the sources listed in clauses (1) and (2). A religious society or organization which solicits from its religious affiliates who are qualified under this subdivision and who are represented in a body or convention is exempt from the requirements of sections 309.52 and 309.53. The term "member" shall not include those persons who are granted a membership

upon making a contribution as a result of the solicitation.

Section 309.515(1)(b).

This provision was the subject of the ruling of the court of appeals. The court concluded that the selective regulation of religious organizations that appears on the face of the exemption contravenes the establishment clause.

The Questions Are Unsubstantial.

1. Appellees' standing to challenge the Minnesota Charitable Solicitations Act as violative of the establishment clause is manifest. Appellees are injured in fact by the statute since the state has sought to apply the law to them and such application would directly prohibit and inhibit the solicitation activities which appellees propose to conduct within Minnesota. *McGowan v. Maryland*, 366 U.S. 420 (1961), among other cases, leaves no doubt as to appellees' standing. In the allegedly conflicting case, *Citizens Concerned for Separation of Church and State v. City and County of Denver*, 628 F.2d 1289 (10th Cir. 1980), no injury in fact to the plaintiffs was present.

2. The Minnesota statute clearly works an establishment of religion under the "primary purpose and effect" standard of *Lemon v. Kurtzman*, 403 U.S. 602 (1971), since on its face it favors some religions over others by burdening the non-preferred churches with numerous requirements of registration and disclosure while exempting other churches from these provisions. The disfavored churches are those that obtain their funding primarily through solicitations from the public rather than from donations from their members. Such state-conferred advantages based upon mode of religious practice and organization violate the neutrality mandated by the establishment clause as explicated in a long line of cases, for example, *School District v. Schempp*, 374 U.S. 203 (1963). In addition, the differential effect of the exemption is rendered even more obviously non-neutral by the fact that its fit with respect to its supposed purposes is

extremely tenuous and the fact that it would most heavily burden unconventional religions. The decision of the Eighth Circuit is fully in accordance with that of the North Carolina Supreme Court in the only other case to have considered the constitutionality of a statute of this kind, *Heritage Village Church & Missionary Fellowship, Inc. v. State*, 299 N.C. 399, 263 S.E.2d 726 (1980).

The decision below does not conflict with *Gillette v. United States*, 401 U.S. 437 (1971), which involved only a de facto, not as here a de jure, preference of religions. Also, unlike the present case, the conscientious objection statute in *Gillette* represented a considered legislative accommodation of the free exercise and establishment clauses.

ARGUMENT.

I.

Appellees Have Standing to Raise Establishment Clause Claims.

Appellees are injured in fact by the Minnesota Charitable Solicitations Act, Minn.Stat. §309.50-.61 (1980), and they therefore have standing to challenge its validity. *See, e.g., Sierra Club v. Morton*, 405 U.S. 727, 737-39 (1972). This elementary proposition is ignored by the state, which complains that the court of appeals applied the "overbreadth doctrine" and did not require that the Unification Church first prove that it is a religious organization before raising establishment clause claims.

Virtually every establishment clause case decided by this Court refutes the state's position. In no case has inquiry into the religious beliefs or practices of a litigant raising an establishment claim been required.[4] On the contrary, this Court has only inquired as to whether the plaintiffs "have suffered direct economic injury", allegedly due to the operation of the law in question. *McGowan v. Maryland*, 366 U.S. 420, 430 (1961). If so, the litigants "have standing to complain that the statutes are laws respecting the establishment of religion". *Id.* at 431.

Therefore anyone directly affected by a law asserted to constitute an establishment may challenge it, be he a businessman affected by a Sunday closing law, *McGowan v. Maryland, supra*, or be he a taxpayer affected by a governmental expenditure, *Flast v. Cohen*, 392 U.S. 83 (1968); *Everson v. Board of Education*, 330 U.S. 1 (1947), or be he a parent or child affected by a state mandated prayer,

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[4]That a court could do so at all consistently with the Constitution is dubious. *See United States v. Ballard*, 322 U.S. 78, 87 (1944) ("Man's relation to his God was made no concern of the state"). *See Thomas v. Review Bd.*, 49 U.S.L.W. 4341, 4343-44 (U.S. Apr. 6, 1981) (No. 79-952).

Engel v. Vitale, 370 U.S. 421, 430-31 (1962), or Bible reading, *School District v. Schempp*, 374 U.S. 203, 224 n.9 (1963). Whether or not the challenging party is engaged in religious practice, an overtly non-religious or anti-religious practice, or no religious practice at all matters not. All that matters is that the litigant be injured in fact by the operation of the law, as the appellees surely have been.

Compared to the attenuated effect of the laws which this Court has found to be justiciable under the establishment clause, the direct effect of the registration and disclosure requirements are more than sufficient to create standing. The effects on the appellees here are prohibition or inhibition of their activities[5] rather than mere passive participation in a practice offensive to them. Moreover, the indirect pressure to conform to more conventional religious views caused by the operation of the Act reinforces the conclusion that standing is present.

The demonstration of the infliction by the law of direct injury in fact on the appellees distinguishes this case *toto coelo* from *Citizens Concerned for Separation of Church and State v. City and County of Denver*, 628 F.2d 1289 (10th Cir. 1980), in which there was no showing of a direct or even a casual connection between the challenged act and any injury in fact to the named plaintiff. *Id.* at 1295. This

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[5]The individual appellees could be forbidden to solicit funds until the church has registered, a requirement from which the favored churches are exempt, and the state has threatened to seek precisely this relief. Also, the names of individual church members may become known through financial disclosure provisions from which the favored churches are exempt. The church itself would be subject to the onerous registration provisions which are at the heart of the statute if the selective exemption is allowed to stand. And since the Unification Church claims to be a religious organization, it will be handicapped in its competition with conventional churches for donations from the public whether or not it actually is one. Hence the appellees are, contrary to the assertion of the state, Jur. St. 9, raising their own rights when they complain of the establishment worked by the exemption provisions.

case[6] and *Citizens Concerned* are therefore entirely consistent, and the division in the circuits that the state asserts to exist is simply a figment of its imagination.

In sum, appellees have standing to challenge the statute under the establishment clause pursuant to the decisions of this Court over the last two decades. The decision of the Eighth Circuit was therefore quite right and should not be disturbed.

II.

The Effect of the Statute Is to Advance Some Churches and Inhibit Others in Violation of the Establishment Clause.

The Eighth Circuit, in agreement with the district court, correctly held that the church exemption provision of the Minnesota Charitable Solicitations Act, Minn.Stat. §309.515(1)(b) (1980), which "single[s] out . . . particular church[es] or religious group[s]," *Walz v. Tax Commission*, 397 U.S. 664, 673 (1972), for favored treatment by the state, violates the establishment clause of the first amendment.[7] Jur. St. A-5 to A-14, 637 F.2d 562, 565-69 (8th Cir. 1981). The court of appeals so held in reliance upon the familiar tripartite formulation of *Lemon v. Kurtz-*

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[6]The decision of the Eighth Circuit relied more upon *Village of Schaumburg v. Citizens for a Better Environment*, 444 U.S. 620, 634 (1980). Most likely this approach was triggered by the incessant emphasis of the state in that court on another free speech case, *Broadrick v. Oklahoma*, 413 U.S. 601 (1973), to which *Schaumburg* is an appropriate rejoinder. But in any event, the court below was clearly correct, for the reasons stated herein, in concluding that the character of the plaintiff church as a religious organization or not is irrelevant to whether it and its members have standing in this case.

[7]The first amendment's establishment clause, like its other provisions, is applicable to the states through the fourteenth amendment. *Everson v. Board of Educ.*, 330 U.S. 1, 15 (1947).

man, 403 U.S. 602 (1971),[8] which the Court just this Term has had occasion to iterate. *Stone v. Graham*, 101 S.Ct. 192, 193 (1980) (No. 80-321) (per curiam).

The district court and the court of appeals collectively found that the provision principally at issue was at odds with all three portions of *Lemon*.[9] However, since a violation of any one of the *Lemon* principles is sufficient to entail a violation of the clause, *Stone v. Graham, supra*, 101 S.Ct. at 193, and although appellees believe that the judgment may be affirmed under all three standards, it is necessary for present purposes to look no further than the ground common to both courts below,[10] the "principal or primary effect" branch of the *Lemon* test.

The statute at issue is an explicit legislative classification of churches. It subjects some, those which, with minor exceptions,[11] receive more than half of their total contributions from the public, no matter how small their total volume of contributions, to onerous requirements of financial disclosure and reporting to the state but exempts from these requirements the remainder, no matter how large the dollar amount they may receive from the public.

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[8]First, the statute must have a secular legislative purpose; secprincipal or primary effect must be one that neither advances nor inhibits religion . . .; finally the statute must not foster "an excessive government entanglement with religion."
Id. at 612-13 (citations omitted).

[9]The district court relied upon the second and third parts of the *Lemon* test but did not reach the first. Jur. St. A-18 to A-19 (order granting summary judgment), *incorporating by reference id.* A-24 (magistrate's report and recommendation on summary judgment), *incorporating by reference id.* A-62 to A-65 (magistrate's report and recommendation on preliminary injunction). The court of appeals found violations of the first and second parts but declined to reach the third. Jur. St. A-14, 637 F.2d at 569.

[10]See note 9, *infra*.

[11]All churches with total contributions of under $10,000 are exempt, provided however that they meet three additional conjunctive criteria. Minn.Stat. §309.515(1)(a) (1980).

Entirely in accord with the North Carolina Supreme Court, the only other court to have considered the question, *Heritage Village Church & Missionary Fellowship, Inc. v. State*, 299 N.C. 399, 263 S.E.2d 726 (1980), the Eighth Circuit, noting that a "significant effect of the classification" was "to assist (by deregulation) certain religious groups, while burdening others," Jur. St. A-11, 637 F.2d at 568, "conclude[d] that the Minnesota Statute prefers some religions over others." *Id.* A-14, 637 F.2d at 569.[12] The court, therefore, was on exceedingly sound ground when it invalidated the provision since, as has been recognized from the Court's earliest case dealing with an establishment clause challenge to a state statute, *see Everson v. Board of Education*, 330 U.S. 1, 15 (1947), perhaps the first principle of the clause is that it "forbids . . . governmental preference of one religion over another." *School District v. Schempp*, 374 U.S. 203, 216 (1963). But preference is precisely the result of Minnesota's starkly differential scheme of state regulation, which is expressly aimed at churches alone.

In these circumstances, the result of the selective exemption is to

> favor[ ] only those religious organizations which solicit primarily from their own members. The inescapable impact is to accord benign neglect to the more orthodox, denominational, and congregational religions

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[12]Appellants' claim that appellees "proffered no evidence that the duties of the non-exempt religious organizations amount to any substantive burden," Jur. St. 16, borders on the frivolous. The court of appeals noted that "the burden of compliance with the Act is certainly not *de minimus*." *Id.* A-11, 637 F.2d at 568. That this conclusion is an understatement is demonstrated by the court's careful analysis of the Act's requirements for non-exempt organizations. *Id.* A-11 to A-14, 637 F.2d at 568-69. The North Carolina Supreme Court easily reached precisely the same result. *Heritage Village Church, supra*, 299 N.C. at 411, 263 S.E.2d at 733. Indeed, the mere fact that non-exempt churches are the only ones routinely required publicly to disclose the innermost workings of their financial affairs alone places them at a substantial comparative disadvantage.

> while subjecting to regulation those religions which spread their beliefs in more evangelical, less traditional ways. This the state may not do.

Heritage Village Church, supra, 299 N.C. at 411, 263 S.E.2d at 737.

Otherwise put, the inter-church neutrality mandated by the establishment clause cannot tolerate the selective regulation of churches according to their religious practice and tenets. The decision of the courts below that the exemption provision is therefore not neutral in its effect is clearly correct.

Moreover, two additional factors exist which, while perhaps strictly unnecessary to the holding, render the illegitimacy of the statutory classification even more readily apparent. The impermissible effect of section 309.515(1)(b) is first illustrated by the fact that the means-end fit of the statute is drastically askew. As the court of appeals noted, of the six exemption provisions of Minn.Stat. §309.515 (1980), that relating specifically to religious organizations, *id.* §309.515(1)(b), is unique. Jur. St. A-9, 637 F.2d at 565. The other five either constitute complete exclusions or limit their scope to organizations with a minimal absolute level of public financial participation. These exemptions thus "appear[] generally to serve the valid purpose of freeing from regulation certain organizations for which public disclosure of funding would not significantly enhance the availability of information to contributors." *Id.* A-9, 637 F.2d at 567.

In contrast, the provision aimed directly at churches rests on an entirely different basis. Eschewing specifically for the religious category of charitable organizations reliance simply upon an across-the-board criterion of significant public contribution, *see* Minn.Stat. §309.515(1)(a) (1980), the statutory scheme there imposes as well a *relative* measure of such contributions to determine whether or not a particular church is exempt.

The special exemption provision for churches makes little apparent sense. Jur. St. A-6, 637 F.2d at 565-66. The state had asserted that the Act, including its exemption provisions, was enacted to prevent fraud in charitable solicitations and to "assist[] informed decisionmaking by Minnesota's charitable contributors . . . ." Brief of Appellants-Cross-Appellees at 17 (8th Cir.). Manifestly, however, the danger of fraud and the need for public awareness is surely no greater with respect to an exempt church which, for example, receives from non-members $1 million of a total of $2 million in contributions than it is with respect to an non-exempt church which similarly receives $10,001 of a total of $20,000. Indeed, the vastly greater total volume of public contributions in the former case would lead one logically to expect that the asserted state purposes would be far more at risk in that situation.[13]

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[13]Reminded by the Eighth Circuit of "the absence of any explanation for the sizable loophole created [by the church exemption provision] for some religious organizations," Jur. St. A-7, 637 F.2d at 566, appellants now seek to construct one. They assert that "when an organization raises more than half of its monies from non-members, it becomes by definition more the financial creature of the public than of its internal membership. At this point, there is a greater public need in providing some sort of external check in its fund-raising activities." *Id.* 18. The very same contention was, for good reason, resoundingly rejected by the North Carolina Supreme Court. *Heritage Village Church, supra,* 299 N.C. at 411-12, 263 S.E.2d at 733-34.

Quite clearly there is nothing talismanic in this context about a 50% cut-off point. If state "concerns of accountability," Jur. St. 19 n.8, exist with respect to organizations with small absolute amounts of public contributions but which exceed the 50% criterion, the same concerns are necessarily present with respect to large churches exempt under the provision. In both situations public dollars are being contributed for which, in appellants' view, the public deserves an accounting.

A large-membership group is equally likely, for example, to engage in misrepresentation in public solicitation if it believes that to be an expedient method of garnering the greatest amount of money for its cause. Any "ongoing and consistent contact with its membership" would thus be irrelevant as "a check on its financial practices." See *id.* 18.

Moreover, appellants' very concept of a church which is "more the financial creature of the public than of its internal membership," *id.*,

(footnote continued on following page)

Second, by reason of the nature of the classificatory criterion of the statute, its burdens predictably will fall with greatest impact upon those churches which, through either religious belief or perceived necessity, look to the public at large rather than to a discrete and stable membership body for their support, resulting in "an inhibition by the state of a specific mode of religious practice . . . ." *Heritage Village Church, supra,* 299 N.C. at 411, 263 S.E.2d at 733.

Among the former are religious societies which, by scriptural command, spread their beliefs through "missionary evangelism", that is, which "seek through personal visitations to win adherents to their faith." *Murdock v. Pennsylvania,* 319 U.S. 105, 108-09 (1943) (footnote omitted). That "[t]his form of religious activity occupies the same high estate under the First Amendment as do worship in the churches and preaching from the pulpits" and "has the same claim to protection as the more orthodox and conventional exercises of religion" has long been recognized. *Id.* at 109.

Within the latter category one may expect to find "newly organized or minor cults and creeds," *Troyer v. Town of Babylon,* 438 F.Supp. 1135, 1139 (E.D.N.Y.), *aff'd mem. sub nom. Troyer v. Town of Southampton,* 628 F.2d 1346 (2d Cir.), *aff'd mem.*, 101 S.Ct. 522 (1980) (No. 80-333), which, lacking a sufficient existing base of support, need

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would seem to raise more religion clause problems than it answers. This assertion smacks of an unacceptably broad "*parens patriae* claim," *Wisconsin v. Yoder,* 406 U.S. 205, 234 (1972), potentially highly destructive of the first amendment's purpose "to chart a course that preserve[s] the autonomy and freedom of religious bodies. . . ." *Walz v. Tax Comm'n,* 397 U.S. 664, 672 (1972). *See also NLRB v. Catholic Bishop,* 440 U.S. 490 (1979).

Finally, the solace the state seeks for broad legislatvie discretion to draw whatever lines it chooses is not to be found in the cases that it cites, *Minnesota v. Clover Leaf Creamery Co.*, 101 S.Ct. 715 (1981) (No. 79-1171); *City of New Orleans v. Dukes,* 427 U.S. 297 (1976); and *Williamson v. Lee Optical, Inc.*, 348 U.S. 483 (1955), all economic regulation cases. Jur. St. 19. More to the point is the admonition of *NAACP v. Button,* 371 U.S. 415 (1963), that, in the first amendment context, "[p]recision of regulation must be the touchstone." *Id.* at 438.

to solicit funds from prospective or newly-won sympathizers. The first amendment requires that these groups, too, receive equal solicitude at the hands of the state since "[f]reedom of religion is not merely reserved for those with a long purse." *Follett v. Town of McCormick*, 321 U.S. 573, 576 (1944).[14]

For all of these reasons, the exemption provision manifestly violates the establishment clause. The judgment of the Eighth Circuit should therefore be affirmed.

III.

The Decision of the Court of Appeals Is Entirely Consistent With *Gillette v. United States*.

While the state, as it has throughout this litigation, harps on *Gillette v. United States*, 401 U.S. 437 (1971), denominating it as "controlling", Jur. St. 19, *Gillette* simply has no bearing upon this case. *Gillette* involved only a de facto distinction among religious adherents created by a considered Congressional accommodation of religious exercise, whereas the line drawn by the Minnesota Charitable Solicitations Act, Minn.Stat. §309.515(1)(b) (1980), on its face

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[14]Appellants complain of what they see as a "lack of factual bases underlying the Circuit Court's conclusions . . . ." Jur. St. 14. See *id.* at 14-16. This complaint, however, is little more than a tempest in a teapot, for the "very nature" of the statutory scheme, *cf. Walz v. Tax Comm'n*, 397 U.S. 664, 695 (1972) (Harlan, J., concurring) (entanglement), is to burden only some churches with a high degree of state regulation. The law necessarily " 'favor[s]' ", Jur. St. 15, some religious organizations over others. Whether or not the set of favored groups is precisely congruent to that of " 'well-established' " churches, *id.* (quoting *id.* A-7, 637 F.2d at 566), is simply unnecessary for a finding of forbidden effect under *Lemon*, and the court of appeals did not rely on any such "finding" for its conclusion on this point. See *id.* A-14, 637 F.2d at 569. This fact, however, does not detract from the force of the conclusion, evident to both courts below as well as to the North Carolina Supreme Court in *Heritage Village Church, supra*, that, as a general matter, the statutory scheme can be expected to operate disproportionately to visit its burdens on "churches which are new and lacking in a constituency . . . ." Jur. St. A-7, 637 F.2d at 566.

selects some churches for favored treatment over some others whose religious exercise the statute burdens.

Gillette concerned the constitutionality of the conscientious objection provision of the Military Selective Service Act of 1967, 50 U.S.C. App. §456(j) (1976), that relieved from conscription those with conscientious scruples against participation in all wars but not those with similar scruples relating to particular conflicts. As this Court noted, the "critical weakness" of the claim that this provision worked an establishment of religion arose from the fact that the statute did not "on its face . . . discriminate on the basis of religious affiliation or religious belief, apart of course from beliefs concerning wars." *Gillette v. United States, supra*, 401 U.S. at 450. "Properly phrased," therefore, the establishment clause contention was that the failure to exempt selective conscientious objectors worked "a de facto discrimination among religions." *Id.* at 451-52.

The Court's conclusion, that a line drawn on the basis of beliefs concerning war does not constitute a facial religious discrimination, follows from the fact that a claim of autonomy based upon conscience with regard to military service is essentially identical to a claim of autonomy with regard to other types of secular behavior such as the use of drugs or the practice of polygamy. In either case the belief in the claim for autonomy may be dictated by religious belief or personal ethics, it may be held with various degrees of intensity and sincerity by the individual, and it may be of more or less significance in his life.

Consequently, while in every case in which the belief that certain behavior is compelled is religiously motivated "a balancing process," *Wisconsin v. Yoder*, 406 U.S. 205, 214 (1972), is necessary in order to ensure that the general regulation of behavior does not unduly burden the free exercise of religion, *Thomas v. Review Board*, 49 U.S.L.W. 4341, 4344 (U.S. Apr. 6, 1981) (No. 79-952); *Wisconsin v. Yoder, supra*, 406 U.S. at 220, the regulation of behavior

is not an establishment of religion merely because some religious creeds may mandate the behavior while others do not. *See Harris v. McRae*, 100 S.Ct. 2671, 2689 (1980) (No. 79-1268). While the government can, and, as *Yoder* and *Thomas* illustrate, often must, accommodate on an individual basis a claim for autonomy for religiously-mandated behavior, to fail to do so neither favors or disfavors religion more than it favors or disfavors claims for autonomy that are ethically or otherwise based.[15]

On the other hand, this Court has long recognized that governmental distinctions based upon "religious organization or religious creed," *Gillette v. United States*, 401 U.S. at 451,[16] contravene the establishment clause. Prohibition of governmental preference of one religion over another is at the very core of the clause. *School District v. Schempp*, 347 U.S. 203, 216 (1963). "Government in our democracy, state and national, must be neutral in matters of religious theory, doctrine, and practice." *Epperson v. Arkansas*, 393 U.S. 97, 103-04 (1968).

Neutrality in religious practice is precisely what the state has abandoned by its decision to regulate the solicitations of some churches but not others. The exemption provision of the Minnesota Act on its face exempts from regulation those religions that receive "less than half of their funds from the public." Jur. St. A-7, 637 F.2d at 566. In practical terms, this distinction overtly disfavors those "churches which are new and lacking in a constituency, or which, as

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[15]Favoring theistic over non-theistic belief may well constitute an establishment of religion, *Welsh v. United States*, 398 U.S. 333, 356-61 (1970) (Harlan, J., concurring); *see id.* at 343-44 (majority opinion); *United States v. Seeger*, 380 U.S. 163, 184 (1965), but that question is fortunately not presented by this case.

[16]The state conveniently overlooks this portion of the *Gillette* opinion in its brief, and leaves the impression that de jure discrimination can only arise from distinctions among religious affiliations and beliefs, see Jur. St. 20, although the opinion as a whole leaves no doubt that distinctions among religious organizations are as invidious as those among beliefs.

a matter of policy, may favor public solicitation over general reliance on financial support from members." *Id.*[17]

Thus, *Gillette* involved no more than a claim for autonomy for religiously mandated behavior of individuals, which this Court nonetheless carefully reviewed in order to determine whether it was a de facto "religious gerrymander." *Gillette v. United States, supra,* 401 U.S. at 452. Here, to the contrary, the state has in terms distinguished among churches on the face of the statute.[18]

Even were *Gillette* a comparable situation of discrimination and not an entirely distinct analytical problem, *compare, e.g., Personnel Administrator v. Feeney,* 442 U.S. 256 (1979) (de facto discrimination of great practical importance held to be constitutional) *with, e.g., Craig v. Boren,* 429 U.S. 190 (1979) (de jure discrimination of marginal significance held to be unconstitutional), it would still be a wholly different case. The *Gillette* statute came to this Court with a momentum of respect arising from the attempt by Congress to itself accommodate the free exercise claims of those opposed to all wars and the entanglement with religion which it feared would be engendered by "expansion of the exemption to cover objectors to particular wars." *Gillette v. United States, supra,* 401 U.S. at 450; *cf. McDaniel v. Paty,* 435 U.S. 618, 637-38 (1978) (Brennan, J., concurring) (accommodation between free exercise and establishment clauses). Because these Congressional concerns were eminently "supportable", the statute was con-

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[17]This observation of the Eighth Circuit simply translates the definition of the line drawn by the Act from abstract legal terminology into concrete, realistic description. Even were the discrimination worked by the Act not inherently invidious, however, *Gillette* would still be irrelevant because it distinguishes on its face among churches. Since the distinction is de jure and not de facto, it must therefore be measured by the familiar three-prong establishment test of *Lemon v. Kurtzman,* 403 U.S. 602, 612-13 (1971), and its progeny.

[18]Contrary to the state's assertion, Jur. St. 20, neither did the court below find nor have appellees ever contended that the Act's distinction is de facto.

stitutional. *Gillette v. United States, supra,* 401 U.S. at 460.

No equivalent balancing of first amendment interests is presented in the instant case. On the contrary, only by striking down the Act's selective exemption did the lower courts both promote the free exercise of religion, unencumbered by the onerous requirements differentially imposed by the Act, and obviate the establishment clause violations which would result from the Act's unequally applied burdens.

The court of appeals carefully considered *Gillette* but found it to be irrelevant. Jur. St. A-10 to A-11, 637 F.2d at 567-68. This conclusion is clearly correct.

Conclusion.

Appellants present no substantial question for decision by this Court. The judgment of the United States Court of Appeals for the Eighth Circuit should therefore be affirmed.

Dated: May 7, 1981.

Respectfully submitted,

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No. 80-1666

IN THE

Supreme Court of the United States

October Term, 1980

JOHN R. LARSON, Commissioner of Securities, Minnesota Department of Commerce; WARREN SPANNAUS, Minnesota Attorney General; Individually and in their official capacities,

Appellants,

vs.

PAMELA VALENTE, LARRY BARBER, LARRY HAFT, KIMBERLY KORMAN, and HOLY SPIRIT ASSOCIATION FOR THE UNIFICATION OF WORLD CHRISTIANITY,

Appellees.

BRIEF FOR APPELLANTS

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QUESTIONS PRESENTED

1. Whether the court below erred in assuming that a statutory provision intentionally and impermissibly favored certain religious sects over others when there was no evidence of legislative intent supporting this conclusion and no evidence of religious favoritism resulting from the provision.

2. Whether a statute regulating charitable contributions which requires a religious charitable organization to comply with registration and financial reporting requirements if it solicits more than half of its funds from the general public is an establishment of religion.

3. Whether the court below erred in expanding the "overbreadth doctrine" to an establishment clause challenge and in dispensing with the requirement that plaintiffs be injured by the application of the law in question when there has not been a finding that they are or represent a religious organization.

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No. 80-1666

IN THE

Supreme Court of the United States

October Term, 1980

JOHN R. LARSON, Commissioner of Securities, Minnesota Department of Commerce; WARREN SPANNAUS, Minnesota Attorney General; Individually and in their official capacities,

Appellants,

vs.

PAMELA VALENTE, LARRY BARBER, LARRY HAFT, KIMBERLY KORMAN, and HOLY SPIRIT ASSOCIATION FOR THE UNIFICATION OF WORLD CHRISTIANITY,

Appellees.

BRIEF FOR APPELLANTS

PARTIES IN PROCEEDINGS IN THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

There has not been any change in the parties participating in this case since the issuance of the Opinion of the United States Court of Appeals for the Eighth Circuit.

OPINIONS BELOW

The Opinion of the United States Court of Appeals for the Eighth Circuit is reported at 637 F.2d 562 (8th Cir. 1981). The text of this Opinion is set forth in the Joint Appendix hereto. J.A. 130. The order of the District Court for the District of Minnesota granting summary judgment is not reported. That order incorporates by reference portions of the unreported order of the district court granting plaintiffs' motion for a preliminary injunction. The text of these orders is set forth in appellants' Jurisdictional Statement, Appendices B1, and C1 respectively. The orders of the district court adopted the reports and recommendations of the federal magistrate to whom the preliminary injunction and summary judgment motions were referred. The reports and recommendations of the magistrate are set forth in Appendices B2, and C2 respectively.

JURISDICTION

This action was initiated by plaintiffs-appellees (hereinafter "plaintiffs") in the United States District Court for the District of Minnesota pursuant to 42 U.S.C. § 1983. Plaintiffs sought a declaration that the Minnesota Charitable Solicitations Act, Minn. Stat. §§ 309.50-309.61 (1980) was unconstitutional as violative of the First and Fourteenth Amendments and sought an injunction against its enforcement. J.A. 2.

The Order appealed to the Eighth Circuit followed plaintiffs' motion for summary judgment on the merits and the cross motion of defendants for partial summary judgment that two challenged provisions of the Act did not present justiciable issues. On January 19, 1980, the district court granted in part and denied in part plaintiffs' and defendants' motions. Defendants appealed and plaintiffs cross appealed. On January 7,

1981, the United States Court of Appeals for the Eighth Circuit issued an opinion holding a single provision of the Act unconstitutional and modifying and limiting the decision of the district court. A Notice of Appeal to this Court was filed on March 23, 1981, with the Eighth Circuit Court of Appeals. The jurisdiction of this Court to review the decision of the court of appeals is conferred by 28 U.S.C. § 1254(2).

LAW AND CONSTITUTIONAL PROVISIONS IN QUESTION

The Minnesota Charitable Solicitations Act, Minn. Stat. §§ 309.50-309.61 (1980) ("Act") is a comprehensive legislative enactment concerning solicitation of funds for charitable purposes in the State of Minnesota. Among its provisions are those requiring charitable organizations to identify themselves by filing a registration statement with the State of Minnesota (Minn. Stat. § 309.52) and to provide annual financial information about their operations (Minn. Stat. § 309.53). (Together, these two provisions are referred to hereinafter as the "disclosure provisions".)

The subdivision of the Act declared unconstitutional by the court below is one of six subdivisions exempting certain classes of organizations from the disclosure provisions in the Act. This subdivision, Minn. Stat. § 309.515, subdivision 1(b), provides:

> Subject to the provisions of subdivisions 2 and 3, sections 309.52 [registration] and 309.53 [annual reporting] shall not apply to any of the following:
>
> . . .
>
> (b) A religious society or organization which received more than half of the contributions it received in the accounting year last ended (1) from persons who

are members of the organization; or (2) from a parent organization or affiliated organization; or (3) from a combination of the sources listed in clauses (1) and (2). A religious society or organization which solicits from its religious affiliates who are qualified under this subdivision and who are represented in a body or convention is exempt from the requirements of sections 309.52 and 309.53. The term "member" shall not include those persons who are granted a membership upon making a contribution as a result of a solicitation.

The United States Court of Appeals for the Eighth Circuit held Minn. Stat. § 309.515 (1)(b) to be violative of the establishment clause of the first amendment to the United States Constitution, which provides: "Congress shall make no law respecting an establishment of religion . . . ."

The first amendment applies to the states by virtue of the fourteenth amendment to the United States Constitution.

STATEMENT OF THE CASE

This litigation concerns Minnesota's Charitable Solicitation Act (Minnesota Statutes, §§ 309.50-309.61 (1980)) ("Act") relating to the solicitation of funds from Minnesota citizens for charitable purposes. The objectives of the Act are to provide information to Minnesota citizens for the purpose of making them more informed charitable donors and to protect them from fraud and misrepresentation. Essential to Minnesota's statutory scheme is a system of registration and financial disclosure by those individuals and organizations soliciting contributions in the state.

Incorporated into Minnesota's statutory scheme are legislative determinations of when financial disclosure is not neces-

sary to effectuate the purposes of Minnesota's law. These legislative determinations are expressed in a series of six exemptions from the disclosure provisions. One of the six exemptions, the exemption pertaining to those religious organizations and societies which solicit the majority of their funds from their membership or from affiliated organizations, is the sole provision before this Court on appeal.

The district court, without benefit of a factual record, determined that this exemption impermissibly distinguished religious organizations. The court held that the exemption constituted a *per se* violation of the "primary effect" prong of the three-part establishment clause test recited in modern establishment clause decisions of this Court.[1] Because of this purported defect, the court declared the entire Act unconstitutional as to religious organizations.[2]

The United States Court of Appeals for the Eighth Circuit affirmed the ruling of the district court on the exemption

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[1] The district court relied on the test enunciated in *Lemon v. Kurtzman*, 403 U.S. 602, 612-13 (1971): "Every analysis in this area must begin with consideration of the cumulative criteria developed by the court over many years. Three such tests may be gleaned from our cases. First, the statute must have a secular legislative purpose; second, its principal or primary effect must be one that neither enhances nor inhibits religion, *Board of Education v. Allen*, 392 U.S. 236, 243, 88 S.Ct. 1923, 1926 (1968); finally, the statute must not foster "an excessive governmental entanglement with religion" Walz [v. Tax Commission, 397 U.S. 664, 674, 90 S.Ct. 1409, 1414 (1970)]." Jurisdictional Statement A-62.

[2] Plaintiffs challenged the Act on a broad range of constitutional theories summarized in paragraph 8 of their Complaint. These allegations are that the provisions of the Act,

> . . . on their face, substantively and procedurally abridge the exercise of freedom of speech, press, and religion; arbitrarily deprive persons of their liberty and property without due process of law; capriciously deny the equal protection of the laws; and are vague, ambiguous, and overbroad, all in violation of the First and Fourteenth Amendments of the United States Constitution.

J.A. 5. Of these theories, the establishment of religion theory was the sole basis for the determination of unconstitutionality on summary judgment. J.A. 145.

question. First, the court allowed plaintiffs to attack the exemption on establishment clause grounds, although the court expressly noted that plaintiffs had not demonstrated that they were a religious organization adversely affected by the challenged exemption. J.A. 145-46. On the merits of the establishment clause issue, the circuit court, also without benefit of a factual record, assumed the exemption was motivated by an unconstitutional legislative intention to shelter certain (unspecified) religious denominations from the operation of Minnesota's disclosure provisions. The exemption provision was therefore found to constitute a "religious gerrymander." Based on these assumptions, the Eighth Circuit found the exemption provision violated the "secular purpose" prong of the three-part test. J.A. 140.

As a secondary holding, the court found the exemption provision violative of the "primary effect" stricture because it differentiated between religious organizations for reasons not supported by a "compelling" secular justification. J.A. 143. Thus, the exemption provision was declared unconstitutional. J.A. 143. The remedy ordered was to broaden the exemption to encompass all religious organizations and societies. The matter was remanded to the district court to determine whether plaintiffs were a religious organization and thereby entitled to the benefit of the exemption ruling. J.A. 145-46.

A. The Charitable Solicitation Law.

Minnesota's Charitable Solicitation Law, codified as Minn. Stat. §§ 309.50-309.61 (1980), is reproduced in full in the Jurisdictional Statement, A-70. The law was originally enacted in 1961 (as Minn. Laws 1961, ch. 309). The dis-

closure requirements, and exemptions thereto, have remained relatively unchanged since the original enactment.[3]

Minnesota's Act is applicable to any person or organization soliciting contributions for a charitable purpose. "Charitable purpose" is defined in the Act to mean "any charitable, benevolent, philanthropic, patriotic, religious, social service, welfare, educational, eleemosynary, cultural, artistic, or public interest purpose, either actual or purported."[4] Minn. Stat. § 309.50, subd. 3 (1980). The Act operates to protect Minnesota citizens from fraud and attempts to make Minnesota charitable contributors better informed about the charitable organizations which seek their contributions.

In 1978, comprehensive legislation was enacted amending 29 different sections of various Minnesota laws relating to charitable solicitation, charitable trusts, and probate proceedings involving charitable bequests. The exemption provision in question in this litigation was one section of the 1978 legislation. *See* Minn. Laws 1978, ch. 601, § 5.[5]

The disclosure provisions require initial identification of charitable organizations soliciting contributions, Minn. Stat. § 309.52, and routine disclosure of financial information from

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[3] As the court below noted, the Act has not been interpreted by Minnesota's Supreme Court. J.A. 133, n. 3. Also, no implementing rules have been promulgated under the Act, although rulemaking authority is provided. Minn. Stat. § 309.591 (1980).

[4] Minnesota's statutory definition is consistent with the common law definition of "charitable purposes" as including "religious purposes." *See Restatement (Second) of Trusts*, §§ 368, 371 (1959). Charitable contributions have been estimated to exceed $60 billion annually in the United States, of which more than half are made to religious organizations. *See generally*, C. Bakal, *Charity U.S.A.* 9-10, 85-87 (1979).

[5] Between 1961 and 1978, registration and financial reporting was required of religious organizations except "[a]ny group or association serving a bona fide religious purpose when the solicitation is connected with such a religious purpose . . . ." See Minn. Stat. § 309.515 (1976).

charitable organizations annually, Minn. Stat. § 309.53. The information required to be disclosed is set out by statute in both the registration statement section and the annual report section. The Commissioner of Securities may, "by rule or order," require that additional information be supplied. Minn. Stat. § 309.52, subd. 1(p). "Rule" under Minnesota law refers to a statement of general application and can be promulgated only after following the rigorous requirements of Minnesota's Administrative Procedure Act[6] including formal hearings. Minn. Stat. § 15.0411, subd. 3 (1980). "Order" under Minnesota law refers to an action of application to a specific organization which can be undertaken only after notice and formal hearing under the Administrative Procedure Act. Minn. Stat. § 15.-0411, subd. 4 (1980).

The specific financial information which is to be disclosed and the extent of detail required are established by objective criteria. The annual report provision, Minn. Stat. § 309.53, as well as certain definitional sections of the law, specify that the financial information be presented in accordance with "generally accepted accounting principles". Certain information which may be believed especially sensitive by charitable organizations and which is not required to be disclosed by

[6] Minn. Stat. §§ 15.0411-15.052. All rule hearings and contested case hearings in Minnesota are conducted by an independent hearing examiner employed by the Minnesota Office of Administrative Hearings. The hearing examiner's recommendation to the Commissioner is not binding on the Commissioner, but the Commissioner's decision must be made on the basis of the formal record of the hearing, and must be supported by substantial evidence in the record. Minn. Stat. §§ 15.0412, subd. 4(c); 15.0419; 15.0422. Judicial review of rules and orders following contested cases is specifically provided for under Minnesota law. *See* Minn. Stat. §§ 15.0416 and 15.0424 (1980). Additional procedural requirements are specified by administrative rules. *See* 9 *Minnesota Code Administrative Rules* §§ 2.101-2.222.

generally accepted accounting principles (e.g., identification of contributors, or the organization's members or employees)[7] cannot be required by state officials to be publicly disclosed as part of the disclosure process. The information required is thus prepared and made available to the contributing public by the organization itself based solely upon objective criteria.[8]

B. The Exemption Provisions.

The Minnesota legislature has specified those situations in which disclosure is not necessary or not appropriate to further the legislative purposes of preventing fraud and improving donor awareness. This specification of circumstances is contained in the form of six exemption provisions from the disclosure provisions of the Act. Minn. Stat. § 309.515. The exemptions are summarized as follows:

a. Organizations which receive less than $10,000 annually and employ no paid staff;

b. Religious organizations which raise more than half of their contributions from their membership or from affiliated organizations;

c. Organizations subject to the supervision of the Minnesota college system or to national accrediting organizations;

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[7] Identification of "officers, directors, trustees and [the] chief executive officer" is required by Minn. Stat. § 309.52, subd. 1(f) (1980).

[8] An organization soliciting more than $50,000 annually is required to receive in its annual report a statement by a certified public accountant that the information filed "fairly represents the activities of the organization in sufficient detail to permit public evaluation of its operations." Minn. Stat. § 309.53, subd. 3(g) *as amended by* Minn. Laws 1981, ch. 148, § 1 (increasing dollar amount from $25,000 to $50,000).

d. Fraternal, patriotic, social, educational, alumni, professional, trade or learned societies which raise 100 percent of their contributions from their membership;

e. Charitable organizations soliciting contributions for specified individuals and which pass through 100 percent of their contributions raised to those individuals; and

f. Private foundations limiting solicitation to fewer than 100 members of the public.

A number of these exemption provisions are based on the determination that the amount of solicitation is not sufficient to justify the disclosure requirement. The provisions "a" (under $10,000) and "e" (all donations passed through to named individuals) are of this type.

The remaining exemptions are based upon a different principle: the information which would be required to be disclosed is already available to the *persons from whom contributions are sought.* Thus, with respect to contributions sought from the general public by educational institutions, the Act's disclosure provisions would, if applied to such organizations, be duplicative of the existing public disclosure requirements which are part of state supervision and national accreditation of educational institutions (exemption "c"). Similarly, private foundations (exemption "f") are subject to general public disclosure requirements imposed by federal tax law.

The membership based exemptions are in accordance with this principle, since organizations soliciting exclusively or primarily from their members, rather than from the general public, routinely provide financial information to the *persons from whom contributions are sought.* Exemptions "b" (religious organizations) and "d" (fraternal, patriotic, etc.), are

grounded on this premise and distinguish between "member-donors" and "public donors." Members are considered more aware of the activities and uses of funds by the organizations of which they are members. Moreover, members of non-public corporations in Minnesota have a statutory right to inspect books and records of their organizations. This is explicitly provided by Minnesota's Non-Profit Corporation Act. Minn. Stat. § 317.28 (1980). The circuit court accepted the rationale of the member-donor, public-donor distinction as reasonable. J.A. 138.

Nothing in the exemptions themselves, including the exemption found unconstitutional by the court below, refers to or relies upon matters of dogma, religious belief, or any other factor intrinsically religious. Nor is the criterion in the religious exemption so unique as to give rise to the suspicion that it is actually a religious based differentiation in another form. The same criterion applies to fraternal, patriotic, and professional organizations (exemption d), and has been in effect in Minnesota law since the origin of the charitable solicitation law in 1961.[9]

The religious organization exemption in subdivision b is not the only exemption available to religious organizations. The Act's other exemptions apply to all "charitable organizations," including religious ones, and a religious organization not exempt under the terms of exemption "b" may qualify for exemption under any of the other provisions. For example, a religious organization which raises the majority of its funds publicly (not exempt under "b") may still be exempt under subdivision "a" if it raises less than $10,000 annually and has no paid staff employees. Conversely, an otherwise exempt

[9] *See* Minn. Laws 1961, ch. 309, § 2.

religious organization becomes subject to the disclosure provisions in any year in which it employs a professional, paid fund raiser. Minn. Stat. § 309.515, subd. 2. All provisions of the Act, other than the disclosure provisions, apply to all religious charitable organizations.

SUMMARY OF ARGUMENT

Minnesota's Charitable Solicitation Act pertains to all solicitation of funds for charitable purposes in Minnesota. Its objectives are to increase donor awareness about the organizations soliciting contributions and to prevent fraudulent and misleading solicitations. These are legitimate and significant governmental objectives. The provisions of this Act include the requirement to identify the organization and report on the general disposition of funds raised for charitable purposes. Certain classes of organizations whose solicitation activity is relatively limited or which solicit funds from persons with access to financial information are exempted from these identification and reporting requirements. One exempted class is "religious organizations and societies" which solicit most of their funds from members and affiliated organizations. This exemption provision was found by the courts below to be a law respecting an establishment of religion, and therefore proscribed by the first and fourteenth amendments.

The appellate court based its order on its speculation that the exemption was enacted pursuant to improper motive by the Minnesota legislature to favor certain sects or religions. The court erred in so holding. The district court had taken no evidence on legislative motive nor had it intimated any opinion on the question. Motive was not briefed or argued by the parties at any stage in the proceedings. Judicial examination of legislative motive in constitutional adjudication should not

be undertaken lightly and cannot be based on mere judicial suspicion and guesswork.

The exemption provision does not operate to separate religious organizations along any line of religious denomination, sect, dogma, or belief. The criterion that separates an organization's public solicitation is secular in its operation and is neutral in religious matters. The only evidence on the effect of the criterion demonstrates that the non-exempt organizations include those identified with major denominations, and thus "well-established" religious organizations are not necessarily exempted. The secular criterion in Minnesota's law does not differentiate among religious organizations by any factor other than public solicitation. It does not contain any religious component; it is not a law relating to religion.

When an intentional or effective religious discrimination is alleged, the party making the allegation must bring forward evidence supporting the allegation. None has been brought forward in this case. Absent such evidence, a law which affects religious organizations unequally does not violate the establishment clause if the unequal effect results from application of secular criteria. The establishment clause does not require that all religious organizations be identically affected by secular legislation; the extensive variance in the activities of religious organizations negates any possibility that they could be. Given that inevitability, the mere fact that religious organizations are unequally affected does not offend the establishment clause.

The secular criterion behind the challenged exemption is that disclosure need not be required when the majority of the organization's funds are contributed by member-donors. This criterion is reasonably related to the overall objectives of Minnesota's law. The criterion was acknowledged by the court be-

low to be reasonable when applied to non-religious organizations soliciting funds. The same factors justify its application to religious organizations soliciting funds. The establishment clause does not require a religious exemption from every program of state regulation which may affect religious organizations.

Plaintiffs here have shown no injury by application of the exemption provision. The record does not show whether they would receive the benefit of the exemption as enacted or whether the entire provision is irrelevant to their circumstances. Since they are not injured by the law, they lack standing to challenge it. The overbreadth doctrine relied upon by the court below is not applicable to establishment clause challenges. In any event, the overbreadth doctrine is not a substitute for injury in fact.

ARGUMENT

I. THE COURT BELOW IMPROPERLY HELD THE EXEMPTION PROVISION UNCONSTITUTIONAL BASED EXCLUSIVELY UPON ITS OWN UNWARRANTED ASSUMPTIONS CONCERNING LEGISLATIVE MOTIVE AND EFFECT.

A. The Court's Conclusions About Legislative Motive Are Wholly Unwarranted.

The Eighth Circuit Court of Appeals' Opinion is remarkable for the extent to which it relies upon its own speculation in deciding that the law in question was the result of intentional and invidious discrimination by the Minnesota legislature. The court almost appears to envision specific conversations by specific individuals concerning specific religious organizations. At some places, the court's description of what went on in the Minnesota legislature lacks only names and dates:

> The statutory discrimination between such organizations smacks of "religious gerrymandering," [footnote omitted] an apparently intentional favoritism for the religious organizations obtaining some but less than half of their funds from the public. As further discussed, it may be inferred that the draftsmen of this legislation wished to reduce the burden otherwise posed on well-established churches . . . .

J.A. 135-36. Such assumptions pervade the court's opinion. At one point, for example, the court speculated that the exemption "appears to be designed to shield favored sects, while continuing to burden other sects". J.A. 138-39. At another point the court concluded that "it seems much more likely that at some stage of the legislative process special solicitude for particular

religious organizations affected the choice of statutory language. The resulting discrimination is constitutionally invidious." J.A. 140.[10]

The court could not name specific legislators or identify the "favored sects" because it had before it not a shred of evidence concerning the legislative process. Legislative motive was never raised as an issue before the district court and that court made no findings on that issue. In fact, the district court had before it no evidence on which such a finding could have been based. On appeal to the Eighth Circuit, legislative motive was not an issue raised by either party, the plaintiffs-appellees urging the court to affirm on primary effect grounds. Thus, the matter of what the Minnesota legislature attempted to do in enacting this exemption as part of a comprehensive revision to Minnesota's laws concerning charitable organizations was a matter raised on the court's own motion and decided on the court's own speculations concerning events and individuals completely unknown to it.[11]

Even in those cases where evidence of legislative intent is available to the courts, the evidence must be used with great care in constitutional adjudication. As this Court stated in *United States v. O'Brien*, 391 U.S. 367, 383 (1968), "Inquiries into congressional motives or purposes are a hazardous matter." Included in the recognized hazards of constitutional de-

[10] Even on the question of the appropriate remedy for the constitutionally invidious legislation, the court chose between striking the exemption provision and thereby including all religious organizations in the disclosure requirements (unless exempt under one of the remaining exemptions) and broadening the exemption to apply to all religious organizations. The court chose the latter course which it justified based on "probable legislative intent". J.A. 144.

[11] In their Motion to Affirm filed with this Court, plaintiffs have abandoned the appellate court's opinion on "secular purpose," asking for affirmance on "primary effect" grounds. *See* Motion to Affirm at 12.

terminations based upon perceived legislative motivation is the hazard that the court's inquiry necessarily requires speculation even when direct evidence of legislative motivation is before the court.[12] Where the court has before it no direct evidence of legislative motive, as here, and relies instead on inference and assumption, and where the court's dispositive conclusions are prefaced by " it seems much more likely that . . .", J.A. 140, the error of the motivational inquiry is further compounded.

Different considerations do not pertain in establishment clause analysis. Forays into legislative motivation are circumscribed by this Court's recognition of a strong presumption of constitutional motivation. *See e.g., Lemon v. Kurtzman*, 403 U.S. 602, 613 (1971). The presumption was not rebutted in the record nor, given the lack of factual basis,[13] did plaintiffs even attempt to rebut the presumption. The court below erred in doing so on its own motion and without factual basis.

B. The Court's Conclusions Concerning The Religious Denominations Affected By The Exemption Provision Are Totally Unfounded.

As it did on the question of legislative motivation, the court below substituted its own speculation for the required "demonstration" on the question of the effect of the law in question

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[12] "What motivates one legislator to make a speech about a statute is not necessarily what motivates scores of others to enact it and the stakes are sufficiently high for us to eschew guess work." United States v. O'Brien, 391 U.S. at 384. *See generally*, Ely, *Legislative and Administrative Motivation in Constitutional Law*, 79 Yale L.J. 1205 (1970).

[13] Had plaintiffs put into issue the question of motivation, defendants could have shown that shielding favored religions was not a concern expressed in the legislative hearings. See Jurisdictional Statement at 12-13.

on various religious organizations. On this point, the court below interpreted the exemption provision to have effectively (and for constitutional analysis purposes, intentionally) drawn a line between "well-established" religious organizations on the one side and "new" religious organizations on the other. J.A. 136. Even if these terms were defined somewhere in the opinion, this conclusion of the court would be completely without foundation. In reaching this conclusion the court appeared to merely accept plaintiffs' characterization of itself as a new religious organization and to infer therefrom that all organizations sharing that characteristic fall (according to a legislative plan) on the unexempt side of the line drawn by the Minnesota legislature. This reasoning is faulty and is not an adequate substitution for a factual analysis.

The only evidence in the record which bears on this question clearly establishes that the court's speculations were not founded in fact. This evidence enumerates the charitable organizations which had registered under the Act as of August 10, 1979.[14] Included in the list of registered organizations are a number of religiously affiliated organizations, many of which are associated with what are presumably "well-established" religious denominations, as the appellate court used that term.[15] These religious organizations do not resemble in any respect the organizations which both

[14] Affidavit of Susan E. Fortney dated August 10, 1979. J.A. 19.

[15] For example: Brother DePaul Charity Foundation, Catholic Athletic Association, Catholic Welfare Service of Minneapolis, Campus Crusade for Christ, Christian Children's Fund, Inc., Episcopal Lay Discipleship, International Assembly of Christians, Jewish Community Center of St. Paul, Jewish Vocational Services, Little Sisters of the Poor-Minneapolis, Minneapolis League of Catholic Women, Inc., St. Paul Area Young Men's Christian Association (YMCA), Sacramental Encounter of Spokane, Salvation Army-Minneapolis, United Jewish Fund, Vietnamese Buddist Association, YWCA of Winona.

courts below found to be systematically and purposefully subject to the disclosure provisions[16]—i.e., organizations which are new or which are not "well-established."[17]

Had plaintiffs been required to present factual evidence specifying the class of religious organizations which are subject to the disclosure provisions the class would have shared only one characteristic. That characteristic is the one on the face of the legislation: The fact that the majority of contributions are raised by the exempt religious organizations from their members and from their affiliates. There is no other differentiating criterion. There is no distinction based upon religious dogma, popularity, length of time in existence, or any other factor which could be considered evidence material to a demonstration of religious gerrymandering by the Minnesota legislature.

It was error for the court to assume that some sectarian factor existed in this law through which Minnesota had constructed a religious gerrymander. The burden of demonstrating a religious gerrymander is on the party alleging it. *Gillette* v. *United States*, 401 U.S. 437 (1971).

Moreover, since this case was decided pursuant to plaintiffs' motion for summary judgment, any disputed factual issues of motive and effect should have been resolved against, and not for, plaintiffs. *Adickes v. Kress & Co.*, 398 U.S. 144 (1970). Finally, the legislation should have been presumed constitu-

[16] As far as defendants are aware, such non-"well established" and controversial organizations as the Church of Scientology and People's Temple are exempt under the statute.

[17] Both courts below substituted "churches" (without definition) for the statutory term "religious organizations and societ[ies]" throughout their opinions, thereby suggesting they did not understand the mechanics of the exemption provision. Even if a "church" of a particular denomination is exempt, its related organizations are not exempt unless they independently qualify for exemption.

tional. It cannot be held unconstitutional as violative of the establishment clause without factual determinations sufficient to defeat the constitutional presumption. *Board of Education v. Allen*, 392 U.S. 236, 244-45 (1968); *Gillette v. United States*, 401 U.S. 437 (1971). There is simply no basis in either summary judgment procedure or establishment clause analysis for the presumptions of unconstitutionality developed by the circuit court.

II. THE CHALLENGED EXEMPTION IS CONSTITUTIONAL UNDER THE ESTABLISHMENT CLAUSE.

A. The Establishment Clause Does Not Require That Secular Legislation Affect All Religious Organizations Identically.

This case again brings before the Court the question of whether the state can ever, consistent with the establishment clause, enact a law based upon secular criteria which may not identically affect all religious organizations. Plaintiffs argued, and the courts below ruled, that disparate impact is *per se* unconstitutional. The only case of this Court to directly reach this issue, *Gillette v. United States*, 401 U.S. 437 (1971), clearly contradicts this proposition.

Plaintiffs in *Gillette* sought a determination that the Military Selective Service Act of 1967, 50 U.S.C. § 456 (j) violated the establishment clause because it allowed exemptions from military service to persons whose religious beliefs included objections to all wars but did not exempt those whose beliefs included objection only to particular wars. Plaintiffs argued that this law operated as a preference for some religious organizations and their members over others, precisely the

point argued by plaintiffs here and relied upon by both courts below.

This Court in *Gillette* held that disparate treatment alone was not a sufficient basis to render the law void on establishment clause grounds. As this Court noted:

> The critical weakness of petitioners' establishment claim rises from the fact that § 6(j), on its face, simply does not discriminate on a basis of religious affiliation or religious belief, apart of course from beliefs concerning war.

401 U.S. at 450. Thus, the establishment clause does not mandate application of a *per se* rule against all regulation which differently affects religious organizations. Such disparate results, which are inevitable when religious organizations act in areas of legitimate state interest, are permissible if the challenged regulation has a neutral and secular basis.

In *Gillette* this Court also reached the argument made here that the exemption provision, even if facially secular and neutral to religion, nonetheless might constitute a religious gerrymander. With respect to that point the *Gillette* Court stated:

> Of course, this contention of *de facto* religious discrimination, rendering § 6(j) fatally under-inclusive, cannot simply be brushed aside. The question of governmental neutrality is not concluded by the observation that § 6(j) on its face makes no discrimination between religions, for the Establishment Clause forbids subtle departures from neutrality, "religious gerrymanders," as well as obvious abuses. Still a claimant alleging "gerrymander" must be able to show the absence of a neutral, secular basis for the lines government has drawn.

401 U.S. at 452. The plaintiffs in *Gillette* were held not to have met that burden.

The criterion used in the law in question here, the percent of public contributions, is secular on its face, and is secular in its application to religious organizations. There is no nexus between religious belief and dogma on the one hand and fund raising practices on the other. Fund raising practices are not inviolate; they vary among religious denominations with no discernable pattern, and they vary even with respect to different religious organizations within a single denomination.

In *Gillette* as in the case before the Court, the neutrality mandated by the establishment clause is neutrality in matters of religious affiliation and belief. As long as the purpose of the legislation in question is not to discriminate along the lines of religious affiliation, tenet, or belief, and the distinction made by the statute does not separate religious organizations along those lines, there is no establishment clause violation. This *Gillette* analysis is the same as that used by the Court in *Board of Education v. Allen*, 392 U.S. 236 (1968), in overturning a summary judgment declaration of an establishment clause violation:

> The express purpose of § 701 was stated by the New York legislature to be furtherance of the educational opportunities available to the young. Appellants have shown us nothing about the necessary effects of the statute that is contrary to its stated purpose.

392 U.S. at 243.

The court of appeals distinguished *Gillette* based on the court's finding of impermissible legislative motivation. J.A.

140. That finding by the circuit court was inappropriate and wholly unwarranted. *See*, Argument I.A. *supra*. The court also attempted to distinguish *Gillette* on the ground that the exemption in the Military Selective Service Act was based upon "compelling secular justifications." J.A. 143.[18] The compelling secular justification in *Gillette* was pertinent only to the free exercise claim adjudicated therein, and there is no free exercise claim before this Court. On the establishment clause analysis, *Gillette* is the controlling precedent.

The analysis made by the court in *Gillette* is not a separate analysis from the "secular purpose," "primary effect" test used in establishment clause cases both before and after *Gillette*. The *Gillette* Court made a specific finding that both of those tests were satisfied. 401 U.S. at 450. The singular importance of *Gillette* to this case is its clear holding that a secular law's unequal impact is not a *per se* establishment clause violation.

Aside from *Gillette*, a large number of state legislative programs have been held not to violate the establishment clause despite their acknowledged differing effects on religious organizations. For example, in *McGowan v. Maryland*, 366

[18] The appellate court's use of a "compelling secular justification" test in an establishment clause context is not part of the *Lemon v. Kurtzman* test and appears to involve equal protection rather than establishment clause considerations. Notably, however, the standard that unequal effects must be justified by a "compelling secular justification", J.A. 143, has been specifically disapproved in equal protection decisions even where racial discrimination has been alleged. *See* Washington v. Davis, 426 U.S. 229 (1976):

> A rule that a statute designed to serve neutral ends is nevertheless invalid, absent compelling justification, if in practice it benefits or burdens one race more than another would be far-reaching and would raise serious questions about, and perhaps invalidate, a whole range of tax, welfare, public service, regulatory, and licensing statutes that may be more burdensome to the poor and to the average black than to the more affluent white.

426 U.S. at 249 (footnote omitted).

U.S. 420 (1961), that state's Sunday closing laws were attacked as unconstitutional establishments of religion. The fact that different religious groups were affected unequally was not disputed. Nonetheless, the Court found no constitutional defect. Disparate impact on religious organizations was not held inconsistent with either the "secular purpose" test or the "primary effect" test.

Both courts below based their formulations of a *per se* "primary effect" rule on dicta from *Everson v. Board of Education*, 330 U.S. 1, 15, 18 (1947) J.A. 134-35; Jurisdictional Statement A-62. This misinterprets *Everson*. *Everson* does not suggest that a secular based law cannot have disparate effects on the activities of religious organizations. This realization is crucial to proper application of the establishment clause, since secular government legislation inevitably affects religious organizations in their secular activities. As this Court has noted:

> A system of government that makes itself felt as pervasively as ours could hardly be expected never to cross paths with the church. In fact, our state and federal governments impose certain burdens upon and impart certain benefits to virtually all our activities and religious activity is not an exception. The Court is enforced to scrupulous neutrality by the state, as among religions, and also as between religions and other activities, but hermetic separation of the two is an impossibility. It is never required.

Roemer v. Maryland Public Works Board, 426 U.S. 736, 745-46 (1976).

Given the limitless variety of activities of religious organizations, the fact that secular legislation will necessarily affect

some religious organizations more than others cannot be denied, nor can an unrealistic demand for identical effects be imposed. A religious organization which operates a college,[19] builds a church,[20] operates a radio station,[21] sells securities,[22] or owns real estate for charitable purposes[23] will undoubtedly be more affected by legislation in these areas than those that do not. There is no constitutional infirmity in this result. Even in *Everson v. Board of Education*, the challenged statute aided only those religious organizations which operated sectarian schools. Nonetheless, the law was found constitutional. The unequal effect on religious organizations was not the relevant issue.

No *per se* rule based on *Everson* has emerged in the subsequent establishment clause decisions of this Court relating to aid to parochial education. *See, e.g., Committee for Public Education v. Regan*, 444 U.S. 646 (1980); *Wolman v. Walter*, 433 U.S. 229 (1977). Rather, the Court has engaged in exhaustive case-by-case examinations of the details of the aid pro-

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[19] *See, e.g.*, Tilton v. Richardson, 403 U.S. 672 (1971); E.E.O.C. v. Mississippi College, 626 F.2d 477 (5th Cir. 1980) *cert. denied*, 49 U.S.L.W. 3969 (June 30, 1981).

[20] *See, e.g.*, Latter Day Saints v. City of Porterville, 90 Cal.App. 2d 656, 202 P.2d 823 (1949) *cert. dismissed*, 388 U.S. 805 (1950) (municipal zoning authority).

[21] *See, e.g.*, King's Garden, Inc. v. F.C.C., 498 F.2d 51 (D.C. Cir. 1974); Christian Echoes, National Ministry, Inc. v. United States, 470 F.2d 849 (10th Cir. 1972) *cert denied*, 414 U.S. 864 (1973).

[22] *See, e.g.*, Securities & Exchange Comm'n. v. World Radio Mission, Inc., 544 F.2d 535 (1st Cir. 1976).

[23] Walz v. Tax Commission, 397 U.S. 664 (1970).

grams to determine whether the aid to religious organizations operating schools was in fact an aid to religion itself.[24]

The parochial aid cases do not hold that state contact with religious organizations in their secular affairs is a *per se* violation of the establishment clause. No case in this line even remotely suggests that the state must tailor secular legislation to identically affect all religious organizations.

The courts below erred in finding an "identical effects" requirement implicit in *Everson* and in the "primary effect" prong of the establishment clause standard. Considering the variety of secular activities of religious organizations, legitimately secular legislation will necessarily affect religious organizations unequally. This does not violate the establishment clause. *Everson* is not authority to the contrary.

McGowan v. Maryland, 366 U.S. 420 (1961), and the *Everson* line of aid to schools decisions, properly construed, implicitly hold that disparate impact among religious organizations is constitutionally permissible when such distinctions result from application of secular criteria. *Gillette v. United States*, 401 U.S. 437 (1971), so holds explicitly. The challenged provision here meets this standard and is therefore constitutionally proper.

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[24] The distinction in aid to schools cases between secular programs that aid religious organizations operating schools and those that aid religion itself was noted in *Everson*:

> Similarly, parents might be reluctant to permit their children to attend schools which the state cut off from such general governmental services as ordinary police and fire protection, connections for sewage disposal, public highways and sidewalks. Of course, cutting off church schools from the services, *so separate and so indisputably marked off from the religious function*, would make it far more dififcult for the schools to operate. But such is obviously not the purpose of the First Amendment.

330 U.S. at 17-18 (emphasis added).

B. The Challenged Exemption Is Based Upon Secular And Accepted Principles Of Charities Regulation And Is Therefore Constitutional.

The state has a significant interest in protecting its citizens from abusive practices in the solicitation of funds for charity. *Schaumburg v. Citizens for Better Environment*, 444 U.S. 620 (1980). The same interest pertains when the solicitor is a religious organization. *Heffron v. International Society for Krishna Consciousness, Inc.*, 49 U.S.L.W. 4762 (June 22, 1981); *Cantwell v. Connecticut*, 310 U.S. 296 (1940). The circuit court recognized that the Act furthered the state's legitimate interest in charitable solicitation. J.A. 137-38. For this reason the court's apparent hostility toward the challenged exemption provision is not easily understood. First, the majority of the Act makes no distinction among religious and non-religious charitable organizations.[25]

Second, even where the effect on religious organizations is not identical, the differentiating factor is an accepted principle of charities regulation, the member-donor/public-donor distinction. This principle distinguishes funds received form public sources and funds received from membership sources. The circuit court recognized that the member-donor/public-donor distinction serves a legitimate and commendable purpose. J.A. 134, 138.

This distinction is not unique to the religious exemption; it also controls the exemption for fraternal, benevolent and professional societies. *See*, Minn. Stat. § 309.515 subd. 1(d). The criterion was included in Minnesota's original statute on

[25] The religious organization exemption found unconstitutional in Heritage Village Church and Missionary Fellowship, Inc. v. State, 299 N.C. 399, 263 S.E.2d 726 (1980), a case heavily relied upon by the court below, J.A. 136, 142-43, was an exemption from the entire North Carolina solicitation act, not merely from the disclosure provisions thereof.

this question. *See*, Minn. Laws 1961, ch. 309, § 2. Thus, the criterion should not generate suspicion on the grounds of uniqueness or on the notion that it was devised solely to effect a gerrymander.

Among rationales for membership exemption not specifically enumerated by the Eighth Circuit[26] is the fact that members are reasonably assumed to have control over solicitation of contributions from themselves and expenditure of the funds they contribute. Also, members of organizations have greater access to financial information as a matter of Minnesota law. A provision of the Minnesota Non-profit Corporation Act, under which most charitable entities are organized, specifically provides a member of a non-profit corporation the right to inspect the books and records of the organization. Minn. Stat. § 317.28 (1980).[27]

---

[26] "The exemption provision of the Act, section 309.515, without considering the detailed classifications, also appears generally to serve the valid purpose of freeing from regulation certain organizations for which public disclosure of funding would not significantly enhance the availability of information to contributors . . . The safeguards attending membership funding have been mentioned . . . ." J.A. 138. Earlier the court stated: "Membership funding may have built-in safeguards and opportunities for informing contributors whereas solicitation from the public, lacking such safeguards, arguably needs greater public disclosure." J.A. 134. See also, *National Foundation v. City of Fort Worth*, 415 F.2d 41 (5th Cir. 1969) *cert. denied*, 396 U.S. 1040 (1970).

[27] Minn. Stat. § 317.28, subds. 2, 3 provide:

> (2) A member, his agent or his attorney, may inspect all books and records for any proper purpose at any reasonable time.
>
> (3) Upon request by a member, the domestic corporation shall furnish the member with a statement showing the financial result of all operations and transactions affecting income and surplus during its last annual accounting period and a balance sheet containing a summary of its assets and liabilities as of the closing date of such accounting period.

A similar provision of a state non-profit corporation law has been held valid and enforceable by a member even against a religious corporation. See *Bourgeois v. Landrum*, 396 So.2d 1275 (La. 1981).

Where the safeguards of membership funding do not exist, the need for public disclosure is obvious. The general public has no control over solicitations or expenditures, and no familiarity with the organization against which to measure the representations made. The general public has no right of access to the soliciting organization's records and no familiarity with its operations. The state may then require disclosure in furtherance of its interests in preventing deception and improving donor awareness. *Heffron v. International Society for Krishna Consciousness, Inc.*, 49 U.S.L.W. 4762 (June 22, 1981) (Brennan, J., concurring in part, dissenting in part).

This rationale does not evaporate in the context of religious organizations. The state's interests are the same. As public contributions increase as a percentage of total contributions, the need for public disclosure increases. Conversely, as membership donations increase, the need for public disclosure decreases. The particular point at which public disclosure should be required (i.e., the particular dividing line in the exemption in question) is a determination for the legislature. In this case, the Act's "majority" distinction is a compelling point, since it is at this point that the organization becomes predominantly public-funded.[28]

The appellate court suggested that the exemption might have been constitutional had the Minnesota legislature applied the member-donor criterion in the same way to religious organizations as it did to the fraternal, benevolent, professional organizations (i.e., exemption if *all* contributions are from the membership). J.A. 134. This suggestion only highlights the inconsistency in the court's reasoning.

---

[28] Two natural places to weigh in the balance of competing factors are exemptions for complete membership funding and exemption for majority membership funding, the two places the Minnesota legislature chose to make the distinctions. Minn. Stat. § 309.515 1(b), (d).

If religious organizations soliciting all contributions from their membership had been exempted, there would still have been two classes of religious organizations, exempt and non-exempt. Thus, the court's posited exemption would be subject to the same speculation concerning probable legislative motivation and differential treatment of religious organizations as was the provision authored by the Minnesota legislature. Analytically, the challenged exemption and the exemption authored by the court are identical. To the extent the court considered the posited exemption consistent with the establishment clause, it should have found the challenged exemption constitutional as well.

Similarly, the result ordered by the court, a total religious exemption, clearly prefers religious to non-religious charitable organizations and is indeed a line drawn solely on religious grounds. It is this distinction and not that of the Minnesota legislature that is not secularly based. Thus, although the alternative may have been acceptable if authored by the Minnesota legislature, *Walz v. Tax Commission*, 397 U.S. 664 (1970), the religious basis of such an exemption in the circuit court's remedy is less acceptable than is the exemption at hand. *Everson v. Board of Education*, 330 U.S. 1 (1947). Obviously, if a total exemption based upon religious grounds is permissible, then an exemption based upon secular criteria must be constitutional as well.

III. THE COURT BELOW ERRED IN INVALIDATING THE CHALLENGED EXEMPTION WITHOUT REQUIRING PLAINTIFFS TO DEMONSTRATE THAT THEY WERE INJURED IN FACT.

The Eighth Circuit Court of Appeals held that plaintiffs had not demonstrated that they were a religious organization adversely affected by the challenged exemption. J.A. 145. The court nonetheless held that plaintiffs had standing to bring this challenge under the "overbreadth" doctrine. In so holding, the circuit court relied upon *Schaumburg v. Citizens for Better Environment*, 444 U.S. 620 (1980). Although the *Schaumburg* case is similar to the present case in that they are both concerned with state regulation of charitable fund raising, the cases are dissimilar on the point for which *Schaumburg* was cited by the circuit court. There was no establishment clause issue in the *Schaumburg* case and the Court there discussed only free speech principles. The distinction is critical, since "overbreadth," a limited exception to traditional justiciability requirements, has not been extended to establishment clause litigation. *McGowan v. Maryland*, 366 U.S. 420 (1961).

In *McGowan*, this Court held that certain businessmen were allowed standing to attack a Sunday closing law on establishment clause grounds since they were shown to be economically affected by the law. Without this showing of adverse economic impact, standing could not have been maintained. 366 U.S. at 429-30. Thus, the *McGowan* plaintiffs were not permitted to challenge the statute on free exercise grounds since they had not alleged their beliefs to be infringed. This Court stated: "Those persons whose religious rights are allegedly impaired by the statutes are not without effective ways to assert these rights." 366 U.S. at 430. The same circumstance exists here.

Apparently recognizing this, plaintiffs, in their Motion to Affirm, abandoned the rationale employed by the appellate court and did not argue that the overbreadth doctrine was appropriate to the establishment clause challenge. See Motion to Affirm at 9-11. This is so because the overbreadth exception in free speech cases which allows a party to assert injury to persons not before the court is based upon the chilling effect that an overly broad statute may have in discouraging what are constitutionally protected activities.

Speech rights of others may be asserted because "the statute's very existence may cause others not before the court to refrain from constitutionally protected speech or expression." *Broadrick v. Oklahoma*, 413 U.S. 601, 612 (1973). Such inhibition on speech activity has been seen as the direct antithesis of the first amendment. *See, e.g., Nebraska Press Assn. v. Stuart*, 427 U.S. 539 (1976); *New York Times Co. v. Sullivan*, 376 U.S. 254 (1964); *Near v. Minnesota*, 283 U.S. 697 (1931). Even so, the doctrine has been employed "only as a last resort." *Broadrick v. Oklahoma*, 413 U.S. at 613.

No such chilling effect rationale is appropriate in establishment clause cases since it is the effect of the legislation upon the allegedly established religion that is being adjudicated. Speech rights and the policies limiting restraints and inhibitions on speech are not at issue.

More fundamentally, overbreadth is not a complete substitute for injury in fact. Plaintiffs must show they suffer injury from the challenged statute. *Warth v. Seldin*, 422 U.S. 490 (1975); see also *Citizens Concerned for Separation of Church and State v. City and County of Denver*, 628 F.2d 1289 (10th Cir. 1980), *writ of prohibition granted sub nom. City and County of Denver v. Matsch*, 635 F.2d 804 (10th Cir. 1980) *cert. denied*, 49 U.S.L.W. 3949 (June 22, 1981). "Overbreadth"

plaintiffs are not excused from the requirement. *Broadrick v. Oklahoma*, 413 U.S. 601 (1973); *Schaumburg v. Citizens for Better Environment*, 444 U.S. 620 (1980).

This Court has emphasized that the standing requirement is one involving the parties seeking to raise issues, and not the issues themselves. *Flast v. Cohen*, 392 U.S. 83, 100-02 (1968). Whether the plaintiffs have been injured by the law in question is the essential inquiry:

> In sum, when a plaintiff's standing is brought into issue the relevant inquiry is whether, assuming justiciability of the claim, the plaintiff has shown an injury to himself that is likely to be redressed by a favorable decision. Absent such a showing, exercise of its power by a federal court would be gratuitous and thus inconsistent with the Art. III. limitation.

Simon v. Eastern Kentucky Welfare Rights Org., 426 U.S. 26, 38 (1976) (footnote omitted). The focus on the plaintiff and not the claim has been developed in a long line of cases:

> The essence of the standing question, in its constitutional dimension, is "whether the plaintiff has 'alleged such a personal stake in the outcome of the controversy' [as] to warrant *his* invocation of federal-court jurisdiction and to justify exercise of the court's remedial powers on his behalf."

Arlington Heights v. Metropolitan Housing Corp., 429 U.S. 252, 260-61 (1977), *quoting Warth v. Seldin*, 422 U.S. 490, 498-99 (1975), *quoting Baker v. Carr*, 369 U.S. 186, 204 (1962) (emphasis in original of *Warth v. Seldin*).

In this case, the question at issue is the constitutionality of the exemption provision. The standing inquiry must then focus

on whether plaintiffs are adversely affected by this provision. Since the exemption provision adversely affects only those organizations which are religious organizations and which solicit the majority of their money from the general public, it is only those organizations which could have such a personal stake in the outcome of the case so as to satisfy the standing requirement. Plaintiffs therefore cannot challenge the law without demonstrating that they are a religious organization. Since plaintiffs, as was found by the court below, have not demonstrated that they are a religious organization, they necessarily lack standing.

Finally, plaintiffs do not have standing under the taxpayer analysis present in some establishment clause challenges. First, plaintiffs have not alleged taxpayer status. Second, this matter does not involve an allegation of improper expenditure of state funds for religious purposes. It therefore lacks the necessary nexus between tax expenditures and religious establishment upon which the taxpayer standing cases rely. See *Flast v. Cohen*, 392 U.S. 83 (1968).

In short, plaintiffs have shown no personal stake in the litigation. If plaintiffs have standing here, any party has standing to bring any constitutional challenge. The latter proposition has been rejected by this Court and should not be resurrected. *Schlessinger v. Reservists Committee to Stop the War*, 418 U.S. 208 (1974); *Warth v. Seldin*, 422 U.S. 490 (1975); *Flast v. Cohen*, 392 U.S. 83, 129, n.18 (Harlan, J., dissenting). Plaintiffs' establishment clause claim should be dismissed.

CONCLUSION

For the foregoing reasons, the decision of the United States Court of Appeals for the Eighth Circuit should be reversed.

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No. 80-1666

IN THE

Supreme Court of the United States

October Term 1980.

JOHN R. LARSON, etc., *et al.*,

Appellants,

vs.

PAMELA VALENTE, *et al.*,

Appellees.

On Appeal from the United States Court of Appeals for the Eighth Circuit.

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QUESTIONS PRESENTED.

1. Whether the Minnesota Charitable Solicitation Act, which expressly favors some religions over others by exempting only some religious organizations from rigorous requirements, and which lacks constitutionally sufficient justification for the explicit differentiation, violates the first amendment's guarantee of neutrality and hence works an unconstitutional establishment of religion.

2. Whether the religious classification on the face of the exemption provision, which imposes material burdens on certain religious organizations but not on others, has an impermissible primary effect of advancing or inhibiting religion; or, whether substantive provisions of the Act, as applied to religious organizations, foster an excessive government entanglement with religion.

3. Whether appellees, who have alleged injury in fact as a result of the Act, and against whom the Act is being enforced, have standing to raise establishment-clause claims.

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No. 80-1666

IN THE

Supreme Court of the United States

October Term 1980.

JOHN R. LARSON, etc., *et al.*,

Appellants,

vs.

PAMELA VALENTE, *et al.*,

Appellees.

BRIEF OF APPELLEES.

STATEMENT OF THE CASE.

1. The statutory scheme.

Prior to 1978, Minnesota, like virtually every other state regulating the solicitation of charitable contributions, exempted all religious organizations soliciting for religious purposes from the coverage of its statute. In 1978, however, the state amended its Charitable Solicitations Act expressly to exempt some, but only some, religious organizations from the Act's requirements, thereby selectively according favored status to only a limited class of religious organizations. Minn. Stat. § 309.515(1) (b) (1980).[1] The consti-

[1]To appellees' knowledge, North Carolina is the only state other than Minnesota which has adopted a similar explicitly selective regulation of churches in the present context. The North Carolina law was held unconstitutional on establishment grounds by that state's supreme court. *Heritage Village Church & Missionary Fellowship, Inc. v. State*, 299 N.C. 399, 263 S.E.2d 726 (1980); see Jt. App. A-143 & *id.* n. 8, 637 F.2d 562, 569 & *id.* n. 8 (8th Cir. 1981).

tutionality of the 1978 amendment is the subject of this appeal. The appeal thus directly presents the Court, for the first time, with the question of whether a law expressly classifying religious organizations for differential treatment works an unconstitutional establishment of religion.

The Minnesota Charitable Solicitations Act, Minn. Stat. Ann. §§ 309.50-.61 (1980) [hereinafter cited as the Act],[2] sets up an intricate system of state registration, reporting, investigation and enforcement. Under the Act, any non-exempt charitable organization, including any non-exempt religious organization,[3] is prohibited from "solicit[ing] contributions from persons in th[e] state by any means whatsoever unless, prior to any solicitation, there shall be on file with the department of commerce . . . a registration statement. . . ." *Id.* § 309.52. The Act demands, among other things, that the registrant identify the "form of organization" and the "general purposes for which [it is] organized;" identify the "general purposes for which contributions to be solicited will be used" and the "methods by which solicitation will be made;" and provide "such other information as the department may by rule or order require." *Id.* § 309.52(1) (c), (j), (k), (*l*), (p).

The Act further requires all non-exempt organizations, including non-exempt religious organizations, to prepare and to keep records and to file reports not required of exempt

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[2]The Act is reprinted at Jur. St. A-70 to -96.

[3]A charitable organization is defined as any person or organization "who engages in or purports to engage in solicitation for a charitable purpose." Minn. Stat. § 309.50(4) (1980). Charitable purpose is, in turn, defined as "any charitable, benevolent, philanthropic, patriotic, religious, social service, welfare, educational, eleemosynary, cultural, artistic, or public interest purpose, either actual or purported." *Id.* § 309.50(3). Thus, a charitable organization within the meaning of the Act includes any organization that engages in solicitation for a religious purpose, *i.e.*, almost any religious organization or church.

organizations. A non-exempt organization must file an annual report with the state. *Id.* § 309.53(1). The report must include a financial statement, *id.* § 309.53(2), which, if in a given year more than $25,000 has been solicited from within or without the state, must be audited by a certified public accountant with respect to criteria specified by the state. *Id.* § 309.53(g), para. 2. The financial statement must contain "a balance sheet, statement of income and expense, and statement of functional expenses," *id.* § 309.53(3), and must disclose, *inter alia*, "[t]otal receipts and total income from all sources;" costs of management, of fund raising, and of public education; "[f]unds or properties transferred out of state, with explanation as to recipient and purpose;" and "[t]otal net amount disbursed within the state, broken down into total amounts disbursed for each major purpose." *Id.* § 309.53(3) (a)-(f).

The registration statement, annual reports, and all other information required to be filed under the Act are deemed "public records" available to the general public. *Id.* § 309.54(1). All of each non-exempt organization's internal books and records from which the data in the public filings are derived must "be open to inspection at all reasonable times by the department or by the attorney general." *Id.* § 309.54(2). Moreover, any non-exempt organization must "keep and maintain within Minnesota," for at least ten years, all of its "original books and records, or true copies thereof, pertaining to all money or other property collected from residents of this state and to the disbursement of such money or property." *Id.* § 309.54(3).

The department of commerce "may by order deny any application, . . . [or] suspend or revoke any license or registration," if it finds, for example, that the organization has "filed an application which is incomplete in any material respect or contains any statement which . . . is false or

misleading with respect to any material fact," has "engaged in a fraudulent, deceptive or dishonest practice," has previously been enjoined from engaging in solicitation, or has in any way "violated or failed to comply with any provision of [the Act]," *and* "that the order is in the public interest." *Id.* § 309.532(1). A registration may also be suspended or revoked if an organization fails to comply to the state's satisfaction with certain requests for information. *Id.* § 309.58.

The Act forbids any non-exempt organization to spend "an unreasonable amount for management and general costs and fund raising," and expenditure in excess of "30 percent of total income and revenue is presumed to be an unreasonable amount." *Id.* § 309.555(1a). A non-exempt organization that violates this prohibition "shall not be eligible to maintain registration with the department." *Id.* Moreover, the Act invests the commissioner of securities with broad, explicitly discretionary, powers to "make public or private investigations within or outside the state as he deems necessary to determine whether any person has violated or is about to violate any provision of [the Act]," *id.* § 309.533(1)(a), including powers of compulsory process for attendance of witnesses and for production of documents and records. *Id.* § 309.533(2).

As earlier noted, prior to 1978, the Act exempted all religious organizations from its registration and disclosure requirements.[4] In 1978, however, the Act was amended to exempt only *some* religious organizations, each

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[4]Prior to 1973, solicitations on behalf of religious organizations for religious purposes were excluded from coverage in Minnesota in the manner still generally prevalent elsewhere, simply by omitting "religious" from the statutory definition of charitable purpose. 1961 Minn. Laws ch. 309, § 1(3), *reprinted in* Minn. Stat. Ann. § 309.50(3) (West 1969). Thus, during that period, the Act by definition had no application to religious solicitations.

> religious society or organization which received more than half of the contributions it received in the accounting year last ended (1) from persons who are members of the organization; or (2) from a parent organization or affiliated organization; or (3) from a combination of the sources listed in clauses (1) and (2). A religious society or organization which solicits from its religious affiliates who are qualified under this subdivision and who are represented in a body or convention is exempt from the [registration and annual report requirements of the Act]. The term "member" shall not include those persons who are granted a membership upon making a contribution as a result of a solicitation.

Id. § 309.515(1)(b). Thus, as amended, the Act expressly accords favored status to those religious organizations that derive more than half their financial support from their own members[5] or from parent or affiliate organizations.

The Act's 1973 amendment, *inter alia*, expanded the definition in this regard. 1973 Minn. Laws ch. 762, § 2. However, the same 1973 statute also enacted § 309.515, which, as then written, provided a broad exemption for

> [a]ny group or association serving a bona fide religious purpose when the solicitation is connected with such a religious purpose. [N]or shall [§§ 309.52-.53] apply when the solicitation for such a purpose is conducted for the benefit of such a group or association by any other person with the consent of such group or association.

1973 Minn. Laws ch. 762, § 5.

It was the amendment in 1978 of § 309.515 that adopted the express selective exemption of religious organizations, 1978 Minn. Laws ch. 601, § 5, and created the presently existing statutory scheme.

[5]Despite the term's critical place in the statutory scheme, particularly with respect to the exemptions, the Act does not affirmatively define "member," the meaning of which in the context of the broad range of religious organizations is certainly not self-evident. Whether, for example, it refers to card-carrying members, self-styled believers, or something else is not stated. The only attempt at definition is the exclusion contained in the final sentence of Minn. Stat. § 309.515(1)(b) (1980), quoted in text, that itself may or may not be consistent with the internal policies of a given religious organization.

2. The proceedings below.[6]

The action underlying the present appeal was filed in the United States District Court for the District of Minnesota on October 11, 1978, pursuant to 42 U.S.C. § 1983 (1976), seeking a declaration that the Minnesota Charitable Solicitations Act is violative of the first and fourteenth amendments and an injunction against its enforcement. The original plaintiffs were four members of the Holy Spirit Association for the Unification of World Christianity [hereinafter the Unification Church or the Church]. The defendants, appellants in this Court, were John R. Larson, the Minnesota Commissioner of Securities, and Warren Spannaus, the Minnesota Attorney General, the two state officials charged with enforcement of the Act [hereinafter, collectively, the state]. Jt. App. A-4.

Shortly after the filing of this action, the state initiated a proceeding in state court against the Unification Church, alleging that the Church was in violation of the Act. The parties thereafter entered into a stipulation pursuant to which the Unification Church was joined as a plaintiff in the federal action and the state action was stayed. Jt. App. A-14 to -17. The district court entered orders in conformance with the stipulation. *Id.* A-17 to -19.

In challenging the Charitable Solicitations Act, plaintiffs [hereinafter appellees] asserted that the Act, by selectively exempting only some religious organizations from its coverage, and thus expressly imposing substantial burdens on only non-exempt religious organizations, constitutes a forbidden establishment of religion. Appellees further maintained that the selective exemption violates the equal protection clause; that the imposition of the Act's registration

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[6]The Jurisdictional Statement and the Joint Appendix are cited in this brief in the form Jur. St. [page] and Jt. App. [page], respectively.

and disclosure requirements on religious organizations violates both the establishment and free exercise clauses because of the Act's provision for extensive state intrusion into, and systematic control and surveillance of, religious affairs, *see Lemon v. Kurtzman*, 403 U.S. 602 (1971); *Catholic Bishop v. NLRB*, 559 F.2d 1112 (7th Cir. 1977), *aff'd on statutory grounds*, 440 U.S. 490 (1979); that the Act is facially unconstitutional in its application to non-exempt religious and non-religious solicitation centrally protected by the freedom of speech or free exercise clauses because the Act vests impermissibly broad discretion in state officials to "suspend or revoke" the right of such non-exempt organizations to exercise their first amendment right of solicitation, *see Hynes v. Mayor of Oradell*, 425 U.S. 610 (1976); that the Act fails to provide the procedural safeguards necessary in the first amendment licensing context under the doctrine of *Freedman v. Maryland*, 380 U.S. 51 (1965); and that a variety of restrictions in the Act unduly burden the rights of freedom of speech and of the free exercise of religion as guaranteed by the first and fourteenth amendments, *see Village of Schaumburg v. Citizens for a Better Environment*, 444 U.S. 620 (1980). See Jt. App. A-3, -5 to -6.

For these reasons, appellees moved in conjunction with the filing of the complaint for a preliminary injunction against enforcement of the Act. On May 3, 1979, Magistrate (now Judge) Renner filed his Report and Recommendation concluding that the preliminary injunction should be granted, and that the state's motion to dismiss should be denied. Jur.

St. A-36 to -67.[7] On July 5, 1979, the district court, over objection by the state, upheld the magistrate's conclusions and issued the preliminary injunction. *Id.* A-35.

Thereafter, appellees moved for summary judgment, and the state responded with a cross-motion for partial summary judgment. On November 15, 1979, Magistrate Renner recommended that both motions be granted in part and denied in part. *Id.* A-20 to -34. His primary conclusion was that the Act constituted an establishment of religion because of its "failure to treat all religious organizations equally," thus rendering the Act "unconstitutional as it applies to religious organizations." *Id.* A-24.[8]

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[7]In recommending that the preliminary injunction be issued, the magistrate enumerated several grounds upon which he believed that a probability of success on the merits had been shown. One of these was the Act's violation of the establishment clause's inter-sectarian neutrality principle by virtue of the statute's "arbitrar[y]" 50% criterion. Jur. St. A-63.

The magistrate also found, however, that the Act probably violated the first amendment prohibition against excessive government entanglement, *id.* A-63 to -65; that the Act "fail[ed] to provide notice of what is required for a successful registration," *id.* A-55; that "the standards, or lack of them, for suspension or revocation of a registration" were impermissible, *id.* A-55 to -57; that the cease-and-desist provision (§ 309.534), constituted an invalid prior restrant, *id.* A-57 to -58; that the department's investigatory powers appeared overbroad, *id.* A-58; that the Act was in "apparent violation of the *Freedman* [*v. Maryland, supra*] standards," *id.* A-58 to -61; and, finally, that there were "serious questions as to whether the Act violates plaintiffs' rights of free exercise of religion, privacy and freedom of association." *Id.* A-65 to -66.

[8]In light of that conclusion, the magistrate found it "unnecessary to further consider the substantive provisions of the Act as they apply to religious organizations." Jur. St. A-24. Moreover, ruling prior to this Court's decision in *Village of Schaumburg v. Citizens for a Better Environment*, 444 U.S. 620 (1980), the magistrate stated that the "solicitation rights" of "non-religious organizations . . . do not give rise to the high degree of First Amendment protection afforded solicitations by those of a religious nature," and held that, in consequence, "[a]s to [non-religious solicitors], the Act is a legitimate exercise of the state's police power to regulate speech of a commercial nature." *Id.* A-25 (citing *Ohralik v. Ohio State Bar Ass'n*, 436 U.S. 447 (1978)).

By order filed January 21, 1980, the district court granted summary judgment as recommended by Magistrate Renner. *Id.* A-18 to -19. The net effect of the judgment was to return the Act's coverage to the status quo existing prior to the 1978 amendment.

On January 7, 1981, the United States Court of Appeals for the Eighth Circuit affirmed most of the district court's conclusions. Jt. App. A-130 to -146, *Valente v. Larson*, 637 F.2d 562 (8th Cir. 1981). The court of appeals upheld appellees' standing to raise their establishment clause challenges to the Act's exemption of some religious organizations. *Id.* A-133, 637 F.2d at 564-65. Moreover, without reaching appellees' other challenges to the Act's constitutionality, the court held that the "inexplicable religious classification" embodied in the Act's religious exemption provision constituted an unconstitutional establishment of religion. *Id.* A-134 to -143, 637 F.2d at 565-69. With the selective exemption provision thus invalidated, the court held that the proper relief was to extend the exemption to all religious organizations, as was the case prior to the 1978 amendment, rather than to excise the exemption entirely, which would have had the effect of rendering the Act applicable to all religious organizations, a state of affairs the Minnesota legislature had never enacted into law. *Id.* A-143 to -144, 637 F.2d at 569-70.

Magistrate Renner recommended several additional rulings not at issue in the present appeal. He held that the challenge to § 309.534(1a) (cease-and-desist orders) was justiciable, Jur. St. A-24, and was unconstitutional, *id.* A-30 to -32; that, in light of the invalidation of the religious exemption, the claim with respect to the suspension and revocation provision was non-justiciable, *id.* A-26; and that § 309.581 (criminal penalties) was void. Jur. St. A-32. The state did not contest on appeal the district court's determination that § 309.534(1a) was unconstitutional.

In addition, the court of appeals vacated and remanded for "further development" the district court's conclusions that several provisions of the Act, not at issue in this appeal, could not constitutionally be applied to religious organizations, and that any organization claiming to be a religious organization should qualify for exemption. The state is thus free on remand to attempt to prove that the Unification Church is not a "religious organization" within the meaning of the Act, of the perimeters of this Court's decisions, and of the guidelines set forth in such cases as *Washington Ethical Society v. District of Columbia*, 249 F.2d 127 (D.C. Cir. 1957). Jt. App. A-145 to -146, 637 F.2d at 570-71.

The state filed its notice of appeal from the Eighth Circuit's judgment on March 23, 1981 and docketed the appeal in this Court on April 3, 1981. This Court noted probable jurisdiction on June 1, 1981.

SUMMARY OF ARGUMENT.

A. The establishment clause's command of inter-sectarian neutrality derives both from vital symbolism and from quite practical lessons of history. An essential symbolic function of the religion clauses is to assure that government stand clear of favoritism and even the appearance of favoritism in its dealings with different groups of believers. For the government to do otherwise threatens constitutional ideals of a rich diversity of faiths co-existing in a unified society. Moreover, expressly unequal laws, in their debate and in their operation after enactment, pose the serious practical risk of political division along religious lines.

A law that expressly classified religions by name for purposes of differential state regulation would surely call forth the absolute disapprobation of the first amendment. A law, such as that at issue here, that expressly classifies religious organizations with reference to other characteris-

tics for sharply unequal treatment by government, while perhaps not absolutely prohibited, is for similar reasons subject to stringent constitutional scrutiny.

Statutes of the kind framed here by Minnesota differ *toto caelo* from laws of general applicability that, in operation, merely prove to have disparate impacts on religious groups. Statutes with only such de facto effects not only present no direct affront to first amendment values, but are simply unavoidable in the practice of government. Laws that *explicitly* separate groups of religious organizations for unequal treatment, on the other hand, are rarely, if ever, necessary. Similarly, there is in the disparate impact case normally no cause to distrust the motives of legislators on account of incidental effect on religion, but in the case of express categorization, the risk of impermissible motivation is inherent, and should almost always be regarded as intolerable.

For these reasons, a law that utilizes an express religion criterion should be presumptively suspect. At minimum, such an enactment should be judicially salvable only upon a convincing showing that it is substantially related to a significant governmental interest.

B. The statute at issue here does not approach meeting that standard. Lacking a justification in the court of appeals, the state urges in this Court that religious organizations more than half internally funded are less likely to engage in fraudulent practices, and therefore are less needful, in the state's view, of close government supervision when they do solicit from the public than are those who receive more than half of their support from the public. Little apparent sense can be made of this asserted rationale. For example, under the statutory criterion, a religious organization may collect tens of millions of dollars from the Minnesota public and be exempt while another collecting just over ten thousand dol-

lars unmatched by member contributions would be fully subject to regulation.

If a rational basis underlies this scheme, and one is difficult indeed to discern, there is certainly no more than a rational basis. Because the statute, while containing exemptions other than religious, treats religious organizations alone in this particular insensible fashion, any basis for it becomes even more problematic. Thus, any conceivably appropriate constitutional standard for evaluating a law of this kind strongly counsels that Minnesota's selective religious exemption be invalidated.

C. This case invokes the fundamental strand of establishment clause doctrine of government neutrality as among groups of religious organizations. The three-fold test of *Lemon v. Kurtzman*, 403 U.S. 602 (1971), which is of greatest utility in sorting out the subtle constitutional problems involved in the provision of government aid to all religions, is therefore unnecessary to apply here.

If *Lemon* is applied, however, the statute fails, first, the requirement that its principal or primary effect must neither advance nor inhibit religion because of the material fashion in which it treats religious organizations unequally. The Act also contravenes the principle of no excessive government entanglement. The religious organizations to which it applies are subjected to a comprehensive scheme of state investigation and constant surveillance. Moreover, the data with which the state is required to be supplied is coupled with a program that may be utilized to coerce the religious organizations involved to conform, for example, to a vaguely stated but plainly secular standard, the "public interest," potentially highly disruptive of the salutary autonomy counseled by the religion clauses and far too deeply imbued with the possibility of government direction.

D. Finally, appellees clearly have standing to maintain their claims of establishment-clause violation since they have alleged that the organization with which they are affiliated is a religious organization, and therefore that they are injured in fact by the selective exemption provision. In any event, appellees have been subjected to state enforcement of the statute at issue.

ARGUMENT.

I.

THE RELIGIOUS ORGANIZATIONS EXEMPTION OF THE MINNESOTA CHARITABLE SOLICITATIONS ACT VIOLATES THE ESTABLISHMENT CLAUSE.

A. The Minnesota religious exemption provision expressly favors some religious organizations over others and therefore is in conflict with the establishment clause's core guarantee of neutrality between sects.

Appellees have maintained that the Minnesota Charitable Solicitations Act is unconstitutional on several distinct grounds. See pp. 7-8, *supra*. Because Magistrate Renner and the district court on summary judgment, and the court of appeals as well, all found it necessary to address only the establishment clause issue, however, that is the only issue directly before the Court on this appeal. Every judge to consider that issue in this litigation has held the Act's selective exemption of only some religious organizations to constitute an unconstitutional establishment of religion.

At the outset, it is essential precisely to characterize the establishment clause issue presented in this case. Unlike the typical establishment clause controversy, which questions the constitutionality of government programs providing benefits to *all* religious organizations, *see, e.g., Wolman v. Walter*, 433 U.S. 229 (1977); *Lemon v. Kurtzman*, 403 U.S. 602 (1971); *Walz v. Tax Commission*, 397 U.S. 664 (1970), this case involves an attempt by government expressly to grant a special benefit to some religious organizations, but to withhold it from others. The case thus poses a quintessential establishment clause violation for, as the Court has long recognized, "[t]he First Amendment mandates neutrality between religion and religion . . . ." *Epperson v. Arkansas*, 393 U.S. 97, 104 (1968). *See also*

Walz v. Tax Commission, supra, 397 U.S. at 673. By expressly and purposefully providing special benefits to only some religious organizations, the Minnesota Charitable Solicitations Act violates the constitutional "require[ment that] the state . . . be a neutral in its relations with groups of religious believers . . . ." *Everson v. Board of Education,* 330 U.S. 1, 18 (1947); *accord, e.g., Zorach v. Clauson,* 343 U.S. 306, 314 (1952) ("The government must be neutral when it comes to competition between sects.").

Although the Court's analysis of establishment clause issues in cases involving the provision of benefits to *all* religious organizations requires careful consideration of a range of factors, *see Wolman v. Walter, supra,* 433 U.S. at 235-36, and cases cited, the Court has consistently and unambiguously declared that government may not "adopt programs or practices . . . which 'aid or oppose' any religion. This prohibition is absolute." *Epperson v. Arkansas, supra,* 393 U.S. at 106 (quoting *School District v. Schempp,* 374 U.S. 203, 225 (1963)). Since the establishment clause "requires that government . . . effect no favoritism among sects," when government violates the clause's "core" concept of neutrality, the absolutist component of the Clause compels an immediate result. *Walz v. Tax Commission, supra,* 397 U.S. at 695 (opinion of Harlan, J.). In such cases, "the inquiry . . . can end at this point. Neutrality . . . stand[s] as [a] barrier[] against the most egregious and hence divisive kinds of state involvement in religious matters." *Id.*

Indeed, the guarantee of neutrality is so fundamental to our democratic system that, in the almost two hundred years since adoption of the first amendment, the Court has not until now been presented with a law that expressly divides religious organizations into separate categories for differential governmental treatment. The infrequency of such leg-

islative acts is reflective of the clear constitutional consensus that government may not "single[] out . . . particular church[es] or religious group[s]" for special treatment. *See Walz v. Tax Commission, supra,* 397 U.S. at 673.[9]

It is true, of course, that the Charitable Solicitations Act does not expressly grant favored status to specific religions or religious organizations *by name;* that would be the paradigm violation of inter-sectarian neutrality. But that paradigm does not exhaust the establishment clause's guarantee that government "not aid, foster or promote one religion or religious theory against another." *Epperson v. Arkansas, supra,* 393 U.S. at 104. Indeed, statutory distinctions expressly according some religious organizations benefits while at the same time denying those benefits to others pose much the same threat to the constitutional guarantee of neutrality as laws distinguishing religious organizations by name, although perhaps in not quite so dramatic a manner.

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[9]The Court has recognized that governmental neutrality as defined in inter-sectarian terms is perhaps the most essential of the values that the establishment clause was intended to protect. *See School Dist. v. Schempp,* 374 U.S. 203, 216 (1963) ("[T]his Court has rejected unequivocally the contention that the Establishment Clause forbids *only* governmental preference of one religion over another.") (emphasis added).

The Court's treatment of the question is fully consistent with the setting in which the establishment clause was developed. Thus, one study has concluded that, while the history is of course not without some uncertainty, "the proposals which must have been foremost in the minds of the legislators in the First Congress indicated the popular demand for an end to preferential treatment to religions and its concomitant restriction of the right to liberty of religion." C. Antieau, A. Downey & E. Roberts, *Freedom from Federal Establishment* 132 (1964). Moreover, for example, "in every state constitution in force between 1776 and 1789 where 'establishment' was mentioned, it was equated or used in conjunction with 'preference.' " *Id.*; *see id.* at 132-33 (quoting N.J. Const. of 1776, art. XIX; N.C. Const. of 1776, art. XXXIV; Del. Const. of 1776, art. 29; N.Y. Const. of 1777, art. XXXV; Mass. Const. of 1780, pt. I, art. III).

This is not a case, as the state persistently maintains, in which the legislation has a mere de facto, "disparate impact" upon different religious organizations. Brief for Appellants at 20, 21. The state's is, indeed, a fundamental mischaracterization of the Act. A law has a de facto, disparate impact when it is wholly neutral on its face with respect to the criterion at issue, but in operation falls more heavily upon some groups than others. The Charitable Solicitations Act prior to the 1978 amendment, for example, was neutral on its face with respect to different religious organizations, but might have had differential effects upon such organizations in operation.

Similarly, as the state correctly points out, "[a] religious organization which operates a college, builds a church, operates a radio station, sells securities, or owns real estate for charitable purposes will undoubtedly be more affected by legislation in these areas than those that do not." Brief for Appellants at 25 (footnotes omitted). The Minnesota Charitable Solicitations Act, however, is radically different. As presently in force, the Act *expressly* grants an exemption to some religious organizations but not to others. The "disparate impact" is thus de jure rather than de facto. It is mandated on the face of the legislation, and is not a mere incidental effect of the legislation in operation.

This distinction, so familiar in the equal protection field, is central to the analysis of the establishment clause as well. *Compare Personnel Administrator v. Feeney*, 442 U.S. 256 (1979) (disparate impact of facially neutral law in equal protection context) *and Washington v. Davis*, 426 U.S. 229 (1976) (same) *with Gillette v. United States*, 401 U.S. 437 (1971) (same in establishment clause context). *Cf. Walz v. Tax Commission, supra*, 397 U.S. at 696 (opinion of Harlan, J.) ("Neutrality in its application requires an equal protection mode of analysis."). Almost all laws will, in operation,

have some differential effects upon some racial, gender, or religious groups. To treat the existence of such differential effects as presumptively invalid would thus call into question the constitutionality of much, perhaps most, of our legislation. Thus, under equal protection analysis, it is settled that when a law, neutral on its face, "has a disparate impact upon a group that has historically been the victim of discrimination," the law must nonetheless be upheld so long as the impact can "be plausibly explained on a neutral ground" and the party challenging the law cannot demonstrate that it is the product of "purposeful discrimination." *Personnel Administrator v. Feeney, supra,* 442 U.S. at 275, 274; *see City of Mobile v. Bolden,* 446 U.S. 55 (1980); *Village of Arlington Heights v. Metropolitan Housing Development Corp.,* 429 U.S. 252 (1977); *Washington v. Davis, supra.*

The establishment clause may also be violated by a law that "on its face makes no discrimination between religions, for the Establishment Clause forbids subtle departures from neutrality, 'religious gerrymanders,' as well as obvious abuses." *Gillette v. United States, supra,* 401 U.S. at 452. But an individual who claims that a law that does not on its face "discriminate on the basis of religious affiliation or religious belief" is nonetheless violative of the establishment clause because it "works a de facto discrimination among religions" must "show the absence of a neutral, secular basis for the lines government has drawn." *Id.* at 450, 451, 452. For as the state observes, "[g]iven the limitless variety of activities of religious organizations, the fact that secular legislation will necessarily affect some religious organizations more than others cannot be denied, nor can an unrealistic demand for identical effects be imposed." Brief for Appellants at 24-25.

The situation here is quite different. Although the challenged Act does not accord disparate treatment to different religious organizations by name, it expressly grants favored status to some religious organizations while denying such status to others. There are several critical differences between laws having only a de facto disparate impact on religious organizations and those, like the Act, that *expressly* distinguish between such organizations. The use of a religion criterion on the face of legislation is, in a fundamental sense, symbolically inappropriate under the establishment clause. Favoritism is built directly into the legislation, a fact which is in itself of central importance.

Moreover, unlike de facto disparate effects, the express use of a religion criterion on the face of legislation is usually readily avoidable, as demonstrated by the fact that, until now, legislators have managed almost without exception to avoid the use of express statutory distinctions between religious organizations. Thus, unlike the mere disparate impact situation, where invalidation because of disparate impact would usually prevent the government from achieving whatever legitimate interest is served by the law, invalidation because of the express use of a religion criterion would usually still leave government free to achieve most if not all of its interests by simply rewriting the law to eliminate the unconstitutional use of the religion criterion. In this very case, for example, the state could re-write the Act to grant the exemption to all religious organizations; it could grant the exemption to no religious organizations; or it could eliminate the religion criterion entirely by treating religious organizations no differently from all other charitable organizations. At a bare minimum, the burden should be on government convincingly to demonstrate why it is necessary expressly to accord favored status to some religious organizations and not to others.

There is, moreover, another more subtle, but no less important, difference between the mere de facto situation and the sort of problem posed by the Charitable Solicitations Act. Stated simply, there is a much greater danger of improper legislative motivation, in the form of either favoritism or hostility, where a law speaks expressly in terms of religion than where it is neutral on its face but has only a disparate religious impact. The more a law focuses expressly upon so constitutionally sensitive a consideration, the more likely it is that legislators, consciously or unconsciously, will be affected in their deliberations by their expectations as to the likely impact of the legislation. A law that expressly grants a benefit to some religious organizations and not others is, in general, more likely to be tainted by subtle, but constitutionally impermissible, considerations than a law that treats all religions equally. As Justice Jackson has in another setting noted, "there is no more effective practical guaranty against arbitrary and unreasonable government than to require that the principles of law which officials would impose upon a minority must be imposed generally." *Railway Express Agency v. New York*, 336 U.S. 106, 112 (1949) (Jackson J., concurring); *see Walz v. Tax Commission, supra*, 397 U.S. at 689 (Brennan, J. concurring) ("The very breadth of [a] scheme" exempting churches along with numerous other charitable institutions from real property taxes "negates any suggestion that the State intends to single out religious organizations for special preference.").

Moreover, "political division along religious lines was one of the principal evils against which the First Amendment was intended to protect." *Lemon v. Kurtzman, supra*, 403 U.S. at 622. In this context, it is clear, that when a law which expressly grants state favoritism to some religious

organizations but not to others is introduced and debated in a legislative body, the potential for those very dangers to materialize is greatly exacerbated. The potential may be expected to heighten if such a law is actually enacted and thereafter enforced. Thus, while it cannot be gainsaid that "religious values pervade the fabric of our national life," *id.* at 623, the direct injection into the political arena of explicit lines of religious discussion will upset the constitutional equilibrium sought to be maintained by the establishment clause. Stringent judicial scrutiny of laws of this kind is, therefore, essential.

These concerns are illustrated by this case. Under the Charitable Solicitations Act, with minor exceptions, the only religious organizations granted an exemption from the registration and disclosure requirements are those that derive more than half their financial support from their own members or from parent or affiliate bodies. As a consequence, large, traditional congregations tend to qualify for the exemption. Indeed, in the list of registered organizations submitted to the district court, Jt. App. A-19 to -124, one searches in vain for the name of any Catholic or "mainstream" Protestant church or Jewish synagogue. Although the separately organized charitable affiliates of some major churches, such as Catholic Welfare Services of Minneapolis and Lutheran Social Service of Minnesota, are not exempt, the record supplies a ready inference that the churches themselves are. No matter how much money one of these traditional churches raises from the public, and no matter how it is organized to provide information to its membership about its financial practices, it is exempt.

On the other hand, "religions which spread their beliefs in more evangelical, less traditional ways," are less likely to be exempt. *Heritage Village Church & Missionary Fel-*

lowship, Inc. v. State, 299 N.C. 399, 411, 263 S.E.2d 726, 737 (1980). The burdens of the Act will predictably fall with greatest impact upon those religious organizations which, through either religious belief or perceived practical necessity, look to the public at large rather than to a discrete and stable membership for their support. As a class, then, religious societies which, by scriptural command, spread their beliefs through "missionary evangelism," seeking "through personal visitations to win adherents to their faith," *Murdock v. Pennsylvania*, 319 U.S. 105, 108-09 (1943), are more likely to be disadvantaged by the Act. The Act will similarly tend to disfavor "newly organized or minor cults and creeds," which, lacking a solid base of existing support, must solicit funds from prospective sympathizers. *Troyer v. Town of Babylon*, 483 F. Supp. 1135, 1139 (E.D.N.Y.) (Unification Church), *aff'd mem. sub nom. Troyer v. Town of Southampton*, 628 F.2d 1346 (2d Cir.), *aff'd mem.*, 449 U.S. 988 (1980).

The point, of course, is not that the Charitable Solicitations Act is invalid *because* of these disparate effects. Nor is it that the existence of diparate effects necessarily proves *actual* improper legislative motivation. The point, rather, is that in enacting a law that distinguishes expressly between religious organizations, as opposed to one that is neutral on its face but has de facto differential effects, legislators are more likely to be aware of, and perhaps be influenced by, the possibility of such unequal effects.[10] Whether or not

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[10]This risk is concretely illustrated in the legislative deliberations over the 1978 amendment at issue here. During a senate committee hearing on the 1978 amendment, one senator stated his understanding that the proposed selective exemption "is an attempt to deal with the religious organizations which are soliciting on the streets and soliciting by direct mail but who are not substantial religious institutions in . . . our state." Shortly thereafter, another senator asked an assistant attorney general who had helped draft the amendment, "[A]s I understand it, what you're

actual improper motivation can be proved, such laws are at the very least suspect because of the greater risk that their enactment may have been tainted by improper considerations.

For all these reasons, laws like the Charitable Solicitations Act that expressly accord favored status to only some religious organizations pose a different, and far more serious, threat to the policies underlying the establishment clause than laws having a mere de facto disparate impact. And although laws expressly granting special benefits to some religious organizations and not others may not be as problematic under the establishment clause as laws distinguishing expressly between religious organizations by name, and may thus not be subject to the same "absolute" prohibition, they should at the very least be held invalid unless justified by, and closely fitted to, a substantial governmental interest.

B. The fifty percent member-funded criterion of the religious exemption provision is not substantially related to a significant governmental interest.

Under any standard but the most lenient, the favored status granted some religious organizations under the Charitable Solicitations Act cannot stand. The sole explanation offered by the state affords barely a rational basis for the selective exemption, much less the showing necessary to satisfy the demands of the establishment clause in this circumstance.

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trying to get at here is the people that are running around the airports and running around streets and soliciting people — and — are you trying to remove them from the exemption that normally applies to religious organizations, is that correct?" He received the response, "It is." Finally, a senator who apparently had some reservations about the proposed selective exemption stated, "I'm not sure why we're so hot to regulate the Moonies anyway. [Laughter]." *Hearings on Proposed Amendments to the Minnesota Charitable Solicitations Act Before the Minn. Senate Subcomm. on Judicial Administration of the Minn. Senate Comm. on Judiciary* (Mar. 7, 1978) (audio tape). [Note: Minnesota legislative history is recorded by voice tape. Jur. St. 12 n. 6. See *id.* 12-13.]

The state claims that the Act serves the public interest in minimizing fraud in charitable solicitations through public reporting and disclosure. Brief for Appellants at 27. As the court of appeals recognized, that purpose is no doubt a salutary one and one that may be advanced by the Act as a whole. Jt. App. A-137, 637 F.2d at 567. It is, however, undercut rather than furthered by the selective religious exemption. Indeed, that exemption stands logic on its head. Concerns over possible fraud and the need for public disclosure are obviously greater, for example, when an *exempt* religious organization receives from non-members $1 million in charitable contributions, even if that constitutes less than half of the organization's total contributions, than when a *non-exempt* religious organization receives $20,000 from non-members, even if that constitutes more than half its total charitable contributions. The operation of the Act thus flies in the face of all reasonable expectations and does not "follow[] any 'natural perimeters' of public policy concerns." *Id.* A-135, 637 F.2d at 565 (quoting *Welsh v. United States*, 398 U.S. 333, 357 (1970) (Harlan, J., concurring)).

Before the court of appeals, the state failed to offer "any explanation for the sizable loophole created for some religious organizations." See *id.* A-136, 637 F.2d at 566. Before this Court, however, the state attempts to construct such an explanation. In essence, the state maintains that when more than fifty percent of a religious organization's funds come from its own members, those members may confidently be relied upon to supervise the organization's fund-raising practices so as to protect not only themselves, but somehow the public as well. When more than fifty percent of a religious organization's funds come from the public, however, the organization's members, the state argues, can no longer be trusted to supervise the organization's fund raising practices, and the state must then step in to

assume this supervisory role. Brief for Appellants at 28-30. In the state's view, "when an organization raises more than half its money from non-members, it becomes by definition more the financial creature of the public than of its internal membership." Jur. St. 18.

Even putting aside the rather disquieting notion that a religious organization could ever become, "by definition" or otherwise, the "financial creature" of the general public, a notion that in itself suggests grave first amendment questions, the state's purported explanation of the selective exemption is doubtful at best. If there is a "need for public disclosure," Brief for Appellants at 29, with respect to organizations receiving relatively small total contributions from the public, there is an even greater "need" for such disclosure with respect to organizations receiving relatively large total contributions from the public, whether the organization looks to the public for more or less than fifty percent of its support. There is, simply, nothing talismanic about the fifty-percent cut-off.

An exempt religious organization, dependent upon the public for less than half its support, is no less likely than a non-exempt organization to engage, for example, in misrepresentation in its public solicitations if it believes that to be an expedient means of increasing its total revenues. That an organization receives more than half its funds from members bears no substantial relation to its incentive or potential willingness to employ improper practices in its solicitation of funds from the public.

Moreover, there is no reason to believe that organizations raising more than half their funds from members are substantially more likely than other organizations to provide their members with detailed information about their financial affairs. The state's discussion of this point, it should be noted, relies upon an incomplete and misleading analysis

of the Minnesota statutes governing the right of members of religious organizations to obtain information about the organizations' finances. The state cites Minn. Stat. § 317.28 (1980), for example, which grants members of non-profit organizations the right to inspect books and records and to obtain an accounting. Brief for Appellants at 28. Only organizations organized under *id.* ch. 317, the general non-profit corporations statute, however, have such rights. Religious organizations may be organized in other states and, more important, even in Minnesota they may be organized under *id.* ch. 315, which is designed to deal specifically with religious associations and which contains no provision for the regulation, supervision, inspection, or control of fund raising activities or records by members. In any event, even if a religious organization were for some reason organized under chapter 317, its members' right to examine its books and records would in no way be dependent upon the percentage of funds raised by the organization from the public. The selective exemption at issue in this appeal thus cannot sensibly be justified by reference to chapter 317.

Beyond this, however, the state seriously overestimates both the power and likely incentive of members of exempt religious organizations to protect the interests of non-members. Although parishioners in some Protestant denominations may have the power to oversee and participate in church management, members of highly structured, hierarchical churches would have no general claim to such supervisory powers. And even if information concerning an exempt religious organization's financial affairs is in fact available to members, and those members happen to have the power to influence the organization's practices, there is little reason to believe that such members would have any particular incentive to protect the interests of non-members.

And, of course, the members of exempt organizations would not have any greater incentive to protect the interests of non-members than would the members of non-exempt organizations. Similarly, the members of religious organizations receiving more than half their funds from members are no more likely than the members of organizations receiving less than half their funds from members carefully to supervise their organization's expenditures for, in either situation, the individual member's own money is equally at stake.

The state's explanation of the Act's selective exemption of some, but only some, religious organizations is dramatically undercut by the Act's inconsistent treatment of non-religious charitable organizations. The state asserts that "the criterion in the religious exemption [is not] so unique as to give rise to the suspicion that it is actually a religious based differentiation in another form. The same criterion applies to fraternal, patriotic, and professional organizations (exemption d). . . ." Brief for Appellants at 11.

In fact, however, the fifty-percent "criterion in the religious exemption" *is* "unique;" under the Act, even where non-religious charitable organizations receive more than half (but less than all) their support from members, they are not exempt from the reporting and disclosure requirements. Indeed, the only roughly analogous exemption for non-religious charitable organizations — "exemption d" — covers only a narrow class of such organizations which limit "solicitation of contributions to persons who have a right to vote as a member." Minn. Stat. § 309.515(1)(d) (1980). The failure to grant an exemption to charitable organizations indistinguishable from exempt religious organizations in all respects relevant to the state's claimed rationale thus indeed "give[s] rise to the suspicion that [the selective exemption]

is actually a religious based differentiation" and strongly suggests that the selective exemption at issue in this appeal cannot fairly be justified in terms of the state's asserted explanation.[11]

Whatever interest the state may be seeking to further by granting a special exemption to some, but only some, religious organizations from the reporting and disclosure requirements of the Act, it has failed entirely in its effort to demonstrate either that that interest is substantial or that it bears a substantial relation to the exemption as drafted. If government is ever permitted expressly to grant favored status to some, but not all, religious organizations, it must support such extraordinary legislation with a much stronger showing of justification than that here offered by Minnesota.

C. *Gillette v. United States* is not controlling here because the statute in *Gillette* had only a de facto disparate impact upon religions, did not make a de jure religious differentiation, and was, in any event, supported by an overriding government interest.

Throughout this suit, the state has fastened on *Gillette v. United States*, 401 U.S. 437 (1971), as controlling authority for its position that the Charitable Solicitations Act's express grant of an exemption to some, but only some, religious organizations does not violate the first amendment's proscription of laws respecting an establishment of

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[11]The state's assertion that the court of appeals was wrong in suggesting that a different question might be presented if religious organizations, like non-religious charitable organizations, were exempted only if funded *solely* from internal sources, Brief for Appellants at 30, is itself in error. In such circumstances, the express distinction among religious organizations would be eliminated, for such organizations would then be subsumed under the provision governing *all* charitable organizations. Moreover, whether or not ultimately constitutional, an exemption limited to organizations funded *entirely* by their own members is obviously more defensible than the exemption here at issue.

religion. Brief for Appellants at 20-22, 26. Every judicial official who has considered that contention in this litigation has correctly recognized that *Gillette* does not control this case.

In *Gillette*, the Court considered the constitutionality of the conscientious objector provision of the Military Selective Service Act of 1967, 50 U.S.C. app. § 456(j) (1976), which relieved from conscription those with conscientious religious scruples in opposition "to participation to war in any form." The Court rejected a claim that because the statute had the effect of failing also to relieve from conscription religious objectors only to particular wars, it worked an establishment. As the Court emphasized, the "critical weakness" of the claim that this provision was invalid under the establishment clause arose from the fact that the statute did not "on its face . . . discriminate on the basis of religious affiliation or religious belief . . . ." *Gillette v. United States, supra*, 401 U.S. at 450. Indeed, a law drawn on the basis of beliefs concerning war is no more an *express* religious discrimination than a law prohibiting the use of peyote or the practice of polygamy or regulating the operation of radio stations or the sale of securities.

Thus, "properly phrased," the establishment clause contention in *Gillette* was simply that the failure to exempt selective conscientious objectors amounted to a mere "de facto discrimination among religions." *Id.* at 451-52. As already explained, see pp. 17-21, *supra*, the Minnesota Charitable Solicitations Act's *express* line-drawing between classes of religious organizations poses a sharply distinct analytical issue and creates a far more substantial threat to the constitutional guarantee that government may not "single out any religious organization . . . for special treatment." *See Gillette v. United States, supra*, 401 U.S. at 451.

Gillette is clearly distinguishable from the instant case for another reason as well. Unlike the Charitable Solicitations Act, the statute at issue in *Gillette* was supported by overriding governmental interests arising from the duty of Congress under article I, section 8, of the Constitution to provide for the national defense. *See Rostker v. Goldberg*, 101 S. Ct. 2646, 2651 (1981) ("[P]erhaps in no other area has the Court accorded Congress greater deference" than in matters of "national defense and military affairs."). *See also Brown v. Glines*, 444 U.S. 348 (1980); *Greer v. Spock*, 424 U.S. 828 (1976); *Parker v. Levy*, 417 U.S. 733 (1974). The present Act plainly serves no such overriding interest.

D. Although the tests of *Lemon v. Kurtzman* need not be applied to this case of explicit state preferential treatment of only some religious organizations, the Minnesota statute violates both the principal or primary effect and excessive government entanglement branches of *Lemon*.

The court of appeals correctly perceived that laws that expressly prescribe differential governmental treatment of religious groups are inherently and strongly disfavored under the establishment clause and that the constitutional concerns thus evoked are so fundamental to the interests safeguarded by the clause that such laws may be upheld, if at all, only if they are closely tailored to further governmental policies of overriding importance. *See* Jt. App. A-136, 637 F.2d at 566. Since the expressly selective exemption here at issue could not satisfy this standard, the court noted that the statute contravened core establishment principles of neutrality. *See id.*

As an alternative ground of decision, however, the court of appeals held the statute invalid under the three-fold criteria enunciated in *Lemon v. Kurtzman*, 403 U.S. 602

(1971). Although clearly correct in invalidating the statute under *Lemon*, the court of appeals was also correct in placing primary emphasis on the neutrality principle.

The *Lemon* test comprises three criteria: "First, the statute must have a secular legislative purpose; second, its principal or primary effect must be one that neither advances nor inhibits religion . . .; finally, the statute must not foster 'an excessive governmental entanglement with religion.' " *Lemon v. Kurtzman, supra*, 403 U.S. at 612-13 (citations omitted).

The difficult and intricate inquiries required by the *Lemon* tests were designed primarily to evaluate the constitutionality of government programs providing benefits to *all* religious organizations. Indeed, the *Lemon* formulation originated in a school aid case, a situation in which establishment issues are especially subtle. In *Lemon* and in subsequent cases of a similar nature, the Court faced the task of applying the language of the religion clauses in contexts in which "the lines of demarcation" can "only dimly [be] perceive[d]." *Id.* at 612. In cases like the present, where a law conflicts *on its face* with the establishment clause's core guarantee of neutrality, application of the *Lemon* tests is unnecessary.

If *Lemon* is applied to the Minnesota Charitable Solicitations Act, however, the selective exemption is clearly invalid. In applying the *Lemon* standards in this case, the district court held that the primary effect of the exemption was to benefit some churches at the expense of others, and that it threatened to entangle the state in religious affairs, Jur. St. A-18 to -19 (order granting summary judgment), *incorporating by reference id.* A-24 (magistrate's report and recommendation on summary judgment), *incorporating by reference id.* A-62 to -65 (magistrate's report and recommendation on preliminary injunction); the court of appeals,

applying the *Lemon* standards, held that the selective exemption violated the first and second prongs of the test, finding it unnecessary to consider whether it violated the third prong as well.

In light of the arguments presented by the state to the court of appeals, that court's finding that the Act did not pass constitutional muster under the first prong of the *Lemon* standard is fully supportable. As noted, the state failed to offer the court of appeals "any explanation for the sizable loophole created for some religious organizations." 637 F.2d at 566. Accordingly, the court of appeals had no recourse but to find that the Act had no valid secular purpose.[12] Before this Court, however, the state maintains for the first time that the selective exemption is explicable because members of exempt religous organizations are supposedly more likely than members of non-exempt religious organizations to supervise the organization's fund-raising practices. As already demonstrated, this explanation is tenuous at best, and thus is unlikely to satisfy the requirement of a valid secular purpose. The Court need not reach that question, however, for the selective exemption is clearly invalid under the second and third prongs of the *Lemon* standard.

1. Principal or primary effect.

Both the court of appeals and the district court correctly found that the Act failed to satisfy the second prong of the *Lemon* standard, that, to be valid, a statute's "principal or

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[12]In criticizing the court of appeals for speculating "that the law in question was the result of intentional and invidious discrimination by the Minnesota legislature," Brief for Appellants at 15, the state fails to comprehend the court of appeals' dilemma — a dilemma of the state's own making. As that court quite reasonably observed, "intentional discrimination is a very real issue" precisely because of the state's failure of explanation. Jt. App. A-136. 637 F.2d at 566. As explained earlier, see pp. 22-23, *supra*, the presence or absence of an *actual* improper motivation is not the issue in this appeal.

primary effect must be one that neither advances nor inhibits religion . . . ." *Lemon v. Kurtzman, supra,* 403 U.S. at 612." [W]hatever its legislative purpose, the Act has the immediate effect of subjecting some churches to far more rigorous requirements than others." Jur. St. A-63 (magistrate's report and recommendation on preliminary injunction). The principal or primary effect prong of the *Lemon* test does not require courts to engage in "metaphysical judgments." Rather, unless the effect of a law on religious affairs is "remote and incidental," it must be invalidated if it carries even the "possibility" that it might " '*in part* have the effect of advancing religion.' " *Committee for Public Education & Religious Liberty v. Nyquist,* 413 U.S. 756, 783 n. 39 (1973) (emphasis in the original) (quoting *Tilton v. Richardson,* 403 U.S. 672, 683 (1971)). In light of the "material burdens" that "certain religious groups will suffer . . . as a result of the obligations imposed by the act," Jt. App. A-143, 637 F.2d at 569, there can be little doubt that, by exempting some, but only some, religious organizations from these obligations, the Minnesota scheme fails the second prong of the test. See pp. 14-23, *supra.*

2. Excessive government entanglement.

Although the Court need not reach the question, and may dispose of this appeal on the much narrower ground that the Act violates the guarantee of neutrality, there can be little doubt that the Act "foster[s] 'an excessive government entanglement with religion,' " and thus violates the third *Lemon* test as well. *Lemon v. Kurtzman, supra,* 403 U.S. at 613 (quoting *Walz v. Tax Commission, supra,* 397 U.S. at 674). *See Heritage Village Church & Missionary Fellowship, Inc. v. State,* 229 N.C. 399, 414-16, 263 S.E.2d

726, 735-36 (1980). Indeed, the Act imposes precisely the sorts of "sustained and detailed administrative . . . standards" that have repeatedly been condemned by the Court. *Walz v. Tax Commission, supra,* 397 U.S. at 675; *see NLRB v. Catholic Bishop,* 440 U.S. 490, 501 (1979); *Committee for Public Education & Religious Liberty v. Nyquist, supra,* 413 U.S. at 794-95; *Lemon v. Kurtzman, supra,* 403 U.S. at 619-22.

The Act sets up "[a] comprehensive, discriminating, and continuing state surveillance," *Lemon v. Kurtzman, supra,* 403 U.S. at 619, of non-exempt religious organizations. In order to effectuate the statutory enterprise, the Act first requires non-exempt churches to supply state authorities with detailed structural, organizational, and financial information on a regular basis. Minn. Stat. §§ 309.52-.53 (1980). These already comprehensive data may be supplemented through the plenary subpoena powers granted by *id.* § 309.533(2), and the prerogative of "public or private investigations within or outside the state" vested under *id.* § 309.533(1)(a).

The entanglement of the state in religious affairs does not end with the obtaining of information.[13] Rather, the Act authorizes state officials to use the information they obtain for purposes that themselves contravene the third *Lemon* prong.

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[13]The statute's requirements are thus poles apart from the mere passive provision of information for the purpose of informing the public, *see Village of Schaumburg v. Citizens for a Better Environment,* 444 U.S. 620, 637-38 (1980), assuming *arguendo* that a scheme of even that nature may constitutionally be imposed upon churches as distinguished from the non-religious charitable organizations affected by the Illinois law cited in *Schaumburg. Id.* at 638 n.12. The state's apparent assertion to the contrary, Brief for Appellants at 29, notwithstanding, *Heffron v. International Soc'y for Krishna Consciousness,* 101 S.Ct. 2559, 2568-72 (1981) (Brennan, J., concurring in part and dissenting in part), does not propose the validity of such a hypothetical law.

The Act empowers state officials, for example, to "suspend or revoke" the right of non-exempt religious organizations to solicit contributions if they find that the organization has violated the Act *and* that such revocation or suspension is "in the public interest." Minn. Stat. § 309.532(1) (d) (1980). For the state to operate in this context under a "public interest" standard is wholly foreign to the first amendment's guarantee that government "chart a course that preserve[s] the autonomy and freedom of religious bodies . . . ." *Walz v. Tax Commission, supra,* 397 U.S. at 672. Under such a scheme,

> [t]he potential exists for the state not only to substitute its own judgment as to the substantive "purpose" of a particular expenditure, but also to inject itself into the very center of religious disputes. Absent narrow circumstances of outright fraud or collusion or other specific illegality, the propriety of a religious organization's expenditures can be evaluated only by reference to the organization's own doctrinal goals and procedures. The question of proper purpose is an ecclesiastical one, and its resolution necessarily entails an interpretative inquiry into possible deviations from religious policy. "But this is exactly the inquiry that the First Amendment prohibits . . . ."

Heritage Village Church & Missionary Fellowship, Inc. v. State, supra, 299 N.C. at 415, 263 S.E. 2d at 735-36 (footnote omitted) (quoting *Serbian Eastern Orthodox Diocese v. Milivojevich,* 426 U.S. 696, 713 (1976)).

Similarly impermissible entanglements arise out of the Act's overly broad authorization to state officials to undertake investigation and surveillance to determine whether a non-exempt religious organization "expends or agrees to expend an unreasonable amount for management and general costs and fund raising costs," Minn. Stat. § 309.555(1a)

(1980), and, upon making such a determination, to strip the organization of its "eligib[ility] to maintain registration," *id.*, and, hence, of its right to solicit funds from the public. *Id.* § 309.52(1). These processes unconstitutionally enmesh the state in the internal, and appropriately autonomous, affairs of religious organizations.

As is apparent from examination of the statutory scheme, such examples could be multiplied. Indeed the coercive powers granted to the state under the Act may apply even to churches that believe themselves exempt, since the investigative authority extends to the commissioner's discretionary judgment that "any person . . . is about to violate any provision of [the Act] or any rule or order thereunder . . . ." Minn. Stat. § 309.533(1) (a) (1980). The "self-perpetuating and self-expanding propensities," *Lemon v. Kurtzman, supra*, 403 U.S. at 624, of the statute are thus all too evident on its face. The interaction, in sum, of the state's powers of investigation and surveillance and the purposes to which the information obtained are put results in a pervasive state-church "relationship pregnant with dangers of excessive government direction . . . ." *Id.* at 620.

II.

APPELLEES HAVE ALLEGED INJURY IN FACT AS A RESULT OF ENFORCEMENT OF THE MINNESOTA CHARITABLE SOLICITATIONS ACT AND THEREFORE HAVE STANDING TO RAISE ESTABLISHMENT CLAUSE CLAIMS.

As the Court has often observed, whether a party has "*alleged* such a personal stake in the outcome of the controversy as to assure that concrete adverseness which sharpens the presentation of issues" is "the gist of the question of standing." *Baker v. Carr*, 369 U.S. 186, 204 (1962) (emphasis added). *Accord, e.g., Duke Power Co. v. Carolina Environmental Study Group*, 438 U.S. 59, 72 (1978);

Simon v. Eastern Kentucky Welfare Rights Organization, 426 U.S. 26, 41 (1976); *Sierra Club v. Morton*, 405 U.S. 738, 740 (1972). There is no question here but that appellees have alleged that the Unification Church is a religious organization. Jt. App. A-3 to -6. The declaration of appellee Larry Haft, moreover, sets forth factual details of the Unification Church's religious tenets and practices. *Id.* A-7 to -14. Hence, appellees have alleged that they are injured in fact by the establishment of religion created by the Act's selective exemption of only some religious organizations, and they therefore have standing to raise the establishment issue.[14]

The factual setting from which this litigation arose makes appellees' injury by virtue of the challenged Act particularly clear. As indicated in the statement of the case, the Act prior to 1978 exempted all religious organizations from its coverage. Shortly after the 1978 amendment carved out some religious organizations as non-exempt, the state advised appellees to register if they intended to continue fund raising in Minnesota. Thereafter, the state filed an action against appellee Unification Church claiming that its failure to register violated the Act. *State v. Holy Spirit Association for the Unification of World Christianity*, File No. 431272 (Minn. Dist. Ct. 2d Dist., filed Nov. 6, 1978). The state's own actions thus demonstrate that appellees are adversely affected by the Act and, accordingly, have standing to challenge its validity.

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[14]Appellees have not sought to disturb the decision of the court of appeals to remand the action for the purpose of affording "[t]he parties . . . an opportunity to develop the record and obtain rulings below" as to the question of whether the Unification Church is in fact a religious organization. Jt. App. A-145, 637 F.2d at 570. Thus, the very inquiry that the state seeks is mandated by the terms of the Eighth Circuit's opinion in any event.

Moreover, this Court's establishment clause decisions clearly refute the state's contention that appellees lack standing in the absence of a prior judicial determination that the Unification Church constitutes a religious organization within the meaning of the Act. In no decision of this Court has actual inquiry into the religious beliefs or practices of a litigant raising an establishment clause claim been required. To the contrary, in determining whether individuals "have standing to complain that the statutes are laws respecting the establishment of religion," this Court has inquired only as to whether such individuals "have suffered direct economic injury" allegedly due to the operation of the law in question. *McGowan v. Maryland*, 366 U.S. 420, 430-31 (1961).

Compared to the attenuated effects of the laws this Court has in the past held justiciable under the establishment clause, the direct effects of the registration and disclosure requirements are more than sufficient to support a finding of standing. *See, e.g., School District v. Schempp*, 374 U.S. 203 (1963). The effects on appellees are prohibition or inhibition of their activities rather than mere passive participation in practices offensive to them. Moreover, the indirect pressure implicit in the operation of the Act to alter one's solicitation practices in order to avoid the statute's burdens reinforces the conclusion that appellees have standing. *Cf. Engel v. Vitale*, 370 U.S. 421, 431 (1962) ("When the power, prestige and financial support of government is placed behind a particular religious belief, the indirect coercive pressure upon religious minorities to conform to the prevailing officially approved religion is plain.") It is thus

entirely appropriate that the Court consider the merits of this case.[15]

CONCLUSION.

For the foregoing reasons, the judgment of the United States Court of Appeals for the Eighth Circuit should be affirmed.

Dated: September 18, 1981.

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[15]Moreover, to avoid enmeshing federal courts in difficult and consitutionally problematic inquiries into whether organizations are in fact "religious," prudential considerations strongly suggest that any organization making a colorable claim to qualifying as "religious" be accorded standing to raise an establishment claim. *Cf. Thomas v. Review Bd.*, 101 S.Ct. 1425, 1431 (1981) ("[T]he judicial process is singularly ill equipped to resolve [scriptural] differences in relation to the Religion Clauses.").

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No. 80-1666

IN THE

Supreme Court of the United States

October Term, 1980

JOHN R. LARSON, Commissioner of Securities, Minnesota Department of Commerce; WARREN SPANNAUS, Minnesota Attorney General; Individually and in their official capacities,

Appellants,

vs.

PAMELA VALENTE, LARRY BARBER, LARRY HAFT, KIMBERLY KORMAN, and HOLY SPIRIT ASSOCIATION FOR THE UNIFICATION OF WORLD CHRISTIANITY,

Appellees.

REPLY BRIEF

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Appellants,

vs.

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Appellees.

REPLY BRIEF

INTRODUCTION

Before addressing the specific arguments of plaintiffs-appellees ("plaintiffs"), two significant points regarding plaintiffs' responsive brief must be noted. First, plaintiffs have abandoned the primary rationale of the Eighth Circuit on the establishment clause issue and the only rationale on the standing issue. With respect to the establishment clause issue, plaintiffs acknowledge that the exemption provision is not the product of impermissible legislative motivation and intention. Plaintiffs explicitly state that intention is not now an issue before the Court. Brief of Appellees at 22-23, 32 n. 12. With respect to the standing issue, plaintiffs have disavowed the Eighth Circuit's determination that the overbreadth doctrine affords them standing to challenge the exemption where injury in fact is not shown. Instead, plaintiffs contend that they are injured in fact by the exemption provision.

Second, plaintiffs have improperly broadened the scope of their arguments to implicate provisions of the Minnesota Charitable Solicitations Act that are not before this Court on appeal. The only portion of the Act before this Court is the exemption provision applicable to religious organizations. Challenges to other portions of the Act must await further proceedings in the lower courts. Similarly, for plaintiffs to demonstrate standing on the issue before this Court, they must demonstrate that any putative injury is caused by the exemption provision.

ARGUMENT

I. THE EXEMPTION PROVISION IS NOT BASED UPON A RELIGIOUS CRITERION.

Surprisingly, plaintiffs adopt the argument that the exemption provision constitutes *de jure* discrimination as their primary basis for urging that the Court find the provision unconstitutional as violative of the establishment clause.[1] Of course, even if the exemption provision is viewed as creating a distinction among religious groups on its face, this would not in itself lead to a finding of unconstitutionality. *Gillette v. United States*, 401 U.S. 437 (1971) (exemption based on particular tenet of religious belief upheld as constitutional).

As will be shown, it is simply incorrect to construe the challenged provision as somehow being tied to any religious criterion. Plaintiffs do not explain how the criterion (solicitation of money from members of an organization compared to solicitation of money from the general public) is a "religion criterion". Nor could they. There is simply nothing religious in this distinction.

Plaintiffs' argument is simply a conclusory statement. According to plaintiffs, the exemption provision is a *de jure* discrimination because on its face it operates to require

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[1] Plaintiffs' argument appears to be based more on equal protection analysis than establishment clause jurisprudence. Developing such an argument here is anomalous, since the gravamen of an equal protection claim is intentional discrimination, *Washington v. Davis*, 426 U.S. 229 (1976), and the Minnesota legislature's intention in enacting the provision is specifically disavowed as a basis for affirmance. Brief of Appellees at 22-23, 32 n. 12. Also, no equal protection issue is properly before this Court since plaintiffs' motion for summary judgment on equal protection grounds was denied by the district court and was not before the circuit court.

registration and financial disclosure from some but not all religious organizations. Having phrased the issue in this manner, the plaintiffs sidestep the fact that the member-donor rationale which forms the basis of the exemption involves no religious criteria.

Simply because a secular criterion appears in an exemption provision applicable to religious organizations does not transform it, as a matter of law, into a religion criterion. The test in establishment clause analysis is whether the underlying criterion is secularly based. *Gillette v. United States*, 401 U.S. 437 (1971), is precisely on point here. The exemption in *Gillette* was attacked on grounds that it benefitted members of some religious organizations and adversely affected members of other religious organizations. However, once the Court determined that the criterion in the exemption was secular in nature, it foreclosed the *de jure* contention. *See also Jaggard v. Commissioner of Internal Revenue*, 582 F.2d 1189 (8th Cir. 1978), *cert. denied*, 440 U.S. 913 (1979) (exemption from social security tax for those religious organizations which provide financial support for members' retirement held not *de jure* religious discrimination).

In its program of regulating charitable solicitation for the protection of the public, the State of Minnesota has done no more than utilize a criterion based upon the extent of charitable solicitation from the public. Plaintiffs' *de jure* discrimination argument challenging this criterion simply goes too far. It suggests that government may not use secular, activity-related criteria setting forth the parameters of its regulation of that activity if such criteria cross religious lines. Paradoxically, plaintiffs' espousal of a total religious organization exemption, Brief of Appellees at 19, or a religious purpose exemption, Brief of Appellees at 9, introduces criteria unrelated

to any activity being regulated. Rather, plaintiffs' suggested exemption criteria are grounded in the nature of the organization itself. Measured against "religious neutrality" principles, plaintiffs' suggested exemptions are more constitutionally suspect than is Minnesota's.

II. THE EXEMPTION PROVISION DOES NOT VIOLATE THE LEMON V. KURTZMAN ESTABLISHMENT CLAUSE TEST.

The three-pronged establishment clause test enumerated in *Lemon v. Kurtzman*, 403 U.S. 602 (1971), and applied by this Court consistently in recent years, is given a secondary position in the Brief of Appellees, and labelled "unnecessary" to resolution of the establishment clause issue. Brief of Appellees at 31. As noted above, the primary rationale of the circuit court was that the exemption provision violates the secular purpose prong of the test. Plaintiffs abandon the circuit court opinion. Brief of Appellees at 32. Also, plaintiffs' "primary effect" discussion is a simple perfunctory paragraph that repeats the argument that there is a *per se* rule that all religious organizations be equally impacted by state regulation. Brief of Appellees at 32-33. This argument is extensively addressed in the Brief for Appellants at 20-26, was rejected in *Gillette v. United States*, 401 U.S. 437 (1971) and *McGowan v. Maryland*, 366 U.S. 420 (1961), and need not be refuted here.

The "excessive entanglement" prong of the *Lemon v. Kurtzman* test was not addressed by the circuit court, 637 F.2d 562, 569, Joint Appendix at A-143, but is discussed at length by plaintiffs. Brief of Appellees at 33-36. However, this discussion is not confined to the exemption provision which is the sole provision before this Court.

The only issue before the Court is the constitutionality of the exemption provision. Thus, in order for plaintiffs to succeed in their entanglement argument, they must make some showing that this exemption (and not other provisions of the Act) excessively entangles government and religion. Instead of limiting the discussion to the provision before this Court, plaintiffs attack the Act as a whole. Brief of Appellees at 34-36. Thus, their argument involves the state's subpoena and investigative powers, Brief of Appellees at 34, limitations on excessive fund raising expenses, *id.* at 35-36, and even the registration revocation provision of the Act, a provision expressly found non-justiciable by the district court on summary judgment. Jurisdictional Statement at A-19. Since the inquiry here concerns only the exemption provision, reliance on these provisions is inappropriate.[2]

More fundamentally, plaintiffs' argument is misplaced since it concerns free exercise clause and not establishment clause considerations. The entanglement argument shifts the inquiry by concentrating only on the organizations making

[2] To the extent plaintiffs' primary contention is unequal treatment of religious organizations, reference to other provisions of the Act is inappropriate also. The circuit court found that all provisions of the Act except registration and disclosure apply identically to all religious organizations. 637 F.2d at 570; Joint Appendix at 144-45.

disclosure (non-exempt organizations). Thus, establishment clause analysis is brought to bear on what is essentially a regulatory program. Implicit in plaintiffs' entanglement argument is the proposition that the religious organizations which engage in an activity regulated by the state are unconstitutionally "established by regulation." The proposition is a contortion of language and would cause the free exercise clause test to be engulfed by the entanglement prong of the establishment clause test. Thus, plaintiffs' entanglement argument should be rejected as an attempt to introduce a free exercise issue where it was not passed on by the courts below. *See generally EEOC v. Southwestern Baptists Theological Seminary*, 651 F.2d 277 (5th Cir. 1981) (information required concerning nonministerial employees); *United States v. Holmes*, 614 F.2d 985, 989 (5th Cir. 1980) (information required under Internal Revenue Code).

In fact, the system of disclosure in Minnesota's law is structured to minimize government contact with charitable organizations while effectuating the governmental objectives. The mechanics of the disclosure process are described in the Brief for Appellants at 6-9. After an initial registration containing information which is specifically set out by statute, Minn. Stat. § 309.52, subd. 1(a)-(p), annual financial statements are required. The content of the financial statement is also specified in the statute. Minn. Stat. § 309.53. Statements are prepared by the organization itself and accountants selected by the organization itself, and not by the state. The statute specifies that generally accepted accounting principles govern as to preparation. Minn. Stat. § 309.53, subd. 3. There is no requirement that statements be verified by state officials, or formally "approved" as to content.

Thus, the government contact with charitable organizations is limited in this process. It is much more limited, for example,

than it would be were the state forced to rely on its investigative and enforcement powers in civil and criminal fraud proceedings. Plaintiffs' broad entanglement argument would remove charitable solicitation even from the criminal process. However, the excessive entanglement test does not provide a shield behind which religious organizations can act with impunity and in disregard of civil and criminal laws. *See United States v. Holmes*, 614 F.2d 985 (5th Cir. 1980); *Securities & Exchange Comm'n v. World Radio Mission*, 544 F.2d 535 (1st Cir. 1976); *In re Rabinical Seminary*, 450 F.Supp. 1078 (E.D.N.Y. 1978).

Recognizing this, much more direct governmental involvement has been acknowledged not to constitute "excessive entanglement." A detailed inquiry into a religious organization's activity is permissible to determine whether the organization qualifies for tax exemption even where the inquiry includes a determination of whether the organization's activity is secular or religious as long as it "does not entail judicial inquiry into dogma and belief." *Walz v. Tax Commission*, 397 U.S. 664, 697 n. 1 (1970) (Harlan, J., separate opinion). Similarly, in *Committee for Public Education v. Regan*, 444 U.S. 646 (1980), educational officials from the State of New York were required to periodically inspect the records of religious organizations operating schools. State officials mandated accounting methods, audited vouchers, and in the appropriate case, forced repayment of state funds. The resulting relationship was held not to be excessive entanglement. 444 U.S. at 660-61. *See also Tilton v. Richardson*, 403 U.S. 672 (1971) (on-site inspections by government officials to determine whether federally-funded construction projects were put to impermissible sectarian uses by religious organizations held not excessive entanglement); *Smith v. Board of Governors of University of North Carolina*, 429 F.Supp. 871 (W.D. N.C. 1977), *aff'd mem.*, 434 U.S. 803 (1977).

III. PLAINTIFFS' ARGUMENT THAT THE EXEMPTION PROVISION IS NOT SUBSTANTIALLY RELATED TO A SIGNIFICANT GOVERNMENTAL INTEREST IS NOT A PART OF THE ESTABLISHMENT CLAUSE INQUIRY AND IS, IN ANY EVENT, INCORRECT.

Without discussion as to relevance, plaintiffs also suggest that this Court invalidate the exemption provision under the establishment clause on the grounds that it purportedly "is not substantially related to a significant governmental interest". Brief of Appellees at 23. This line of argument is deficient in at least three respects. First, plaintiffs' "substantially related to a significant governmental interest" test has never been an aspect of establishment clause analysis. Plaintiffs simply postulate this test without discussion and without citation to authority suggesting such an inquiry even remotely relates to establishment clause principles. The proper inquiry is the one found in *Gillette v. United States*, 401 U.S. 437 (1971), specifically, whether the claimant can show "the absence of a neutral secular basis for the lines the government has drawn". 401 U.S. at 452. The challenged provision easily survives this test.

Second, plaintiffs' argument, even if accepted as relevant to establishment clause analysis, does not accomplish what it purports to accomplish. Plaintiffs do not and cannot dispute the importance of the state's interest in charitable solicitation. *Village of Schaumburg v. Citizens for a Better Environment*, 444 U.S. 620 (1980). Thus, their significant governmental interest test reduces to the claim that the exemption is either under or over inclusive in accomplishing this purpose.

Their argument is replete with suggestions as to how the Minnesota law might have been alternately drafted.[3] Again, however, there is no discussion of why this inquiry is at all relevant to the establishment clause challenge, particularly in light of the fact that even plaintiffs acknowledge the statute comports with at least minimal constitutional standards. Brief of Appellees at 23 (acknowledging the statute has a "rational basis"). Plaintiffs would apparently have this Court rewrite the provision in accordance with plaintiffs' legislative proposals. It is axiomatic, however, that this is not the function of the judiciary. *New Orleans v. Dukes*, 427 U.S. 297 (1976); *Ferguson v. Skrupa*, 372 U.S. 726 (1963).

Third, plaintiffs have not even demonstrated that the exemption is substantively under or over inclusive. Indeed, plaintiffs' criticisms of the exemption provision are minor. For example, plaintiffs discuss at length the fact that the exemption could have been drawn along lines of total dollars solicited from the general public, as is the exemption in Minn. Stat. § 309.515, subd. 1(a), rather than on a percentage basis. This is a possible alternative but is by no means a clear improvement. Both percentage and dollar criteria succeed in identifying those charitable organizations undertaking significant solicitation activity from the general public, and

[3] ". . . The State could re-write the Act to grant the exemption to all religious organizations; it could grant the exemption to no religious organizations; or it could eliminate the religion criterion entirely by treating religious organizations no differently from all other charitable organizations." Brief of Appellees at 19. Plaintiffs take no position on whether any of these alternatives are constitutional under the religion clauses. The constitutionality of another suggestion (exemption for religious organizations 100 percent internally funded) is expressly disclaimed although it is "obviously more defensible" than the provision as legislated. Brief of Appellees at 28 n. 11.

both criteria have been adopted by the Minnesota legislature in the charitable solicitation law.[4] But it is no argument to say that one criterion is not substantially related to a governmental interest simply because another supplemental criterion could be advanced as well.

Plaintiffs also attempt to belittle the importance of the exemption's member/non-member distinction. Apparently forgetting that on their motion for summary judgment, factual inferences must favor defendants, plaintiffs suggest that this Court infer that the state has "overestimated" the protections inherent in the member-donor context. However, the right of a member to inspect books and records is provided by statute and is recognized in common law.[5] The right is available to a member-donor, whether or not the member-donor chooses to exercise it. It is not available to general public donors.

Moreover, defendants do not rely exclusively on statutory and common law membership rights to information to justify the exemption criterion. Defendants rely on the general prop-

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[4] As explained in defendants' brief, other exemption provisions may apply to religious organizations not exempted by the challenged provision. Thus, there is both the percentage-based exemption applicable to religious organizations, Minn. Stat. § 309.515, subd. 1(b), and a dollar-based exemption available to religious organizations, Minn. Stat. § 309.515, subd. 1(a). See Brief for Appellants at 11-12.

[5] *See* H. Oleck, Non-Profit Corporations, Organizations and Associations 395 (4th ed. 1980). Plaintiffs note that not all religious charitable organizations are incorporated under Minnesota's Non-Profit Corporation Act, which contains an explicit statutory right in members to inspect the books and records of the corporation. Minn. Stat. § 317.28, subd. 3. Religious organizations may also incorporate under Minnesota Statutes, chapter 315, which contains no such explicit authorization. However, membership inspection rights have never been determined in Minnesota for chapter 315 corporations, and Minnesota courts may well decide that such a right is implicit or is contained in common law, as other state courts have done. *See* Oleck, *supra*.

osition that donors who are members of an organization are in a much better position to inform themselves about their organization (and judge the accuracy of the representations made at the time of solicitation) than are donors who are strangers to the organization. This is especially true where contributions are solicited through such sophisticated techniques as those noted by one of the *amicus* here: "Radio, television, door-to-door, and direct mail solicitation . . ."[6] Defendants' proposition has not been disputed by any factual presentation.

As defendants have argued previously, the state's interest in any particular organization making public disclosure is directly related to the extent of the organization's solicitation from the general public. When the donors are members who can inform themselves about the organization, the state's asserted interest in disclosure diminishes. On the other hand, the state's interest increases as general public solicitation increases, and is strongest where all donors are strangers to

[6] Brief of the General Conference of Seventh Day Adventists of the National Council of Churches of Christ in the U.S.A., and of the Baptist Joint Committee on Public Affairs, *Amicus Curiae*, in support of Appellees at 2. The provision is question relates to providing information to preclude successful misrepresentation. The issue is not control of representations or expenditures of funds, although members intrinsically have greater control over these activities than does the public at large.

the organization.[7] Since a spectrum of strength of governmental interest is present, a number of possible lines of distinction are possible. Defendants have demonstrated that drawing the exemption line at the point where the organization relies more on strangers than on members is a reasonable legislative judgment and indeed is the most logical and compelling point at which to draw the line. Brief of Appellants at 27-30. Absent illicit motive, no more rigorous test is appropriate.[8] Thus, even under plaintiffs' test, the statute is constitutional.

Since the membership criterion is not religious, is substantially related to an important state interest, and has not been drawn unreasonably, there is no constitutional defect.

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[7] It is not correct to say that Minnesota is unique in requiring financial disclosure by religious organizations depending upon the criterion of the extent of general public solicitation. Brief of Appellees at 1 n. 1. The State of Maine exempts religious organizations from disclosure "except to the extent that the organization engaged in the solicitation of funds or sales of goods or services to the general public by means of advertisements, personal contacts, mailings or telephone contacts." Me. Rev. Stat. tit. 9, § 5006, subd. 1(B). Maryland exempts religious organizations from registration "if they do not employ a professional solicitor to solicit funds on their behalf or if they do not mail out more than 500,000 solicitations for charitable contributions in any one year." Md. Ann. Code art. 41, § 103C(a)(6). Thus, at least three states, and North Carolina before its statute was voided in *Heritage Village Church and Missionary Fellowship, Inc. v. State*, 299 N.C. 399, 263 S.E.2d 726 (1980), tailor their exemptions along the lines reflecting the extent of solicitation activity directed at the general public.

[8] "We hold that the section survives the Establishment Clause because there are neutral, secular reasons to justify the line that Congress has drawn, and it follows as a more general matter that *the line is neither arbitrary or invidious.*" *Gillette v. United States*, 401 U.S. 437, 449 n. 14 (1971) (emphasis added).

IV. PLAINTIFFS LACK STANDING TO CHALLENGE THE EXEMPTION PROVISION.

In the Brief of Appellees, plaintiffs abandon the rationale of the Eighth Circuit supporting the holding that plaintiffs have standing to have the establishment clause issue adjudicated on summary judgment. Plaintiffs acknowledge now that they must satisfy the "injury in fact" test. Brief of Appellees at 36-38. *See Warth v. Seldin*, 422 U.S. 490 (1975).

This Court has recently described the proper inquiry:

> . . . This requirement of a "personal stake" has come to be understood to require not only a "distinct and palpable injury," to the plaintiff, *Warth v. Seldin*, 422 U.S. 490 (1975), but also a "fairly traceable" causal connection between the claimed injury and the challenged conduct. *Arlington Heights v. Metropolitan Housing Corp.*, 429 U.S. 252 (1977).

Duke Power Co. v. Carolina Environ. Study, 438 U.S. 59, 72 (1978). The "injury in fact" determination implicates the judicial power under the constitution. *Simon v. Eastern Kentucky Welfare Rights Org.*, 426 U.S. 26, 38 (1976).

Neither the district court nor the circuit court found that plaintiffs were a religious organization and members thereof. Plaintiffs acknowledge this. Brief of Appellees at 37 n. 14. The only issue before the Court is the constitutionality of the exemption relating to religious organizations. Unless and until it is determined that plaintiffs are a religious organization and its members, the unidentical impact of the exemption provision for religious organizations cannot be shown to work the "distinct and palpable injury" on plaintiffs which the constitution requires as a prerequisite to invocation of

judicial power. *Warth v. Seldin*, 422 U.S. 490, 501 (1975). Similarly, the determination that the exemption provision is constitutional, which plaintiffs seek here, will not serve to redress any injury plaintiffs suffer. *Arlington Heights v. Metropolitan Housing Corp.*, 429 U.S. 252 (1977).

Plaintiffs present two additional arguments. First, plaintiffs argue that their mere allegation that they are a religious organization and members thereof is itself sufficient to confer standing to have the establishment clause issue adjudicated. Brief of Appellees at 36. The cases cited by plaintiffs that focus solely on the allegations do so because they arise in the procedural context of a defendant's motion to dismiss. *See, e.g., Warth v. Seldin*, 422 U.S. 490 (1975). However, where the allegations of injury are sufficient to survive a dismissal, the burden remains on plaintiff to support the allegations with evidence. Failure to do so requires dismissal following trial. As the Court recently stated in *Gladstone, Realtors v. Village of Bellwood*, 441 U.S. 91, 115 n. 31 (1979):

> Although standing generally is a matter dealt with at the earliest stages of litigation, usually on the pleadings, it sometimes remains to be seen whether the factual allegations of the complaint necessary for standing will be supported adequately by the evidence adduced at trial.

See also Simon v. Eastern Kentucky Welfare Rights Org., 426 U.S. 26, 37 n. 15 (1976); *NAACP, Boston Chapter v. Harris*, 607 F.2d 514, 526 (1st Cir. 1979). Clearly, plaintiffs' mere allegations are insufficient at this stage of the proceedings, since the matter is here pursuant to a motion for summary judgment which is a proceeding on the merits and not on the sufficiency of the complaint. If plaintiffs' argument

were correct, few cases would be dismissed for lack of standing since any prudent pleader would allege harm knowing that no factual support for the allegations would be required.

Plaintiffs' other argument is that they were injured by other provisions of Minnesota's charity law, and thus can challenge any provision of that law. Brief of Appellees at 37-38. In *Simon v. Eastern Kentucky Welfare Rights Org.*, 426 U.S. 26 (1976), the Court held that not only must injury be shown but also that the injury "fairly can be traced to the challenged action of the [state]." 426 U.S. at 41-42. In this case, the action challenged is enactment of the exemption provision. Whatever injury plaintiffs may suffer from other provisions of the Act cannot satisfy the standing requirement as to the exemption provision. There is no standing if "the exercise of the Court's remedial powers would [not] redress the claimed injuries." *Duke Power Co. v. Carolina Environ. Study*, 438 U.S. 59, 74 (1978). Thus, if the injury results from other provisions of the Act, a decision by this Court on the exemption provision will not redress the injury.

CONCLUSION

For the foregoing reasons, the decision of the United States Court of Appeals for the Eighth Circuit should be reversed.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1980

JOHN R. LARSON, Commissioner of Securities, et al.,

Appellants,

—v.—

PAMELA VALENTE, et al.,

Appellees.

BRIEF FOR THE AMERICAN CIVIL LIBERTIES UNION, AND THE MINNESOTA CIVIL LIBERTIES UNION, *AMICI CURIAE*

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INTEREST OF AMICI CURIAE*

The American Civil Liberties Union is a nationwide, non-partisan organization of over 250,000 members, dedicated to defending and preserving the principles embodied in the Bill of Rights. The Minnesota Civil Liberties Union is one of its state affiliates. The ACLU has been involved in many of the leading First Amendment cases by which separation of church and state has been maintained, including Murdock v. Pennsylvania, 310 U.S. 105 (1943), Engel v. Vitale, 370 U.S. 421 (1962), Lemon v. Kurtzman, 403 U.S. 602 (1971), and Committee for Public Education v. Nyquist, 413 U.S. 756 (1973).

First among the liberties secured by the Bill of Rights is a guarantee

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*Letters consenting to the filing of this brief have been lodged with the Clerk.

of religious liberty and complete separation of church and state. As this Court has consistently recognized, that guarantee protects the state from the divisive consequences of religious strife over secular matters, and religion from the intrusive and controlling hand of state regulation. The Act at issue here subjects the basic and necessary activities by which religious organizations fund themselves to carry on their religious missions to a system of prophylactic state regulation far more extensive than has ever been sanctioned by this or any American court. If upheld, the Act would place the state permanently astride the means by which churches operate, a result wholly at odds with the Religion Clauses of the First Amendment.

To protect these vital rights which Minnesota has placed in jeopardy, amici submit this brief, and respectfully urge the Court to rule that the Act is an impermissible attempt to intrude on and regulate activities which, if they may be overseen at all, can only be regulated far more narrowly than the challenged Act requires.

INTRODUCTION AND SUMMARY OF ARGUMENT

Amici agree with the Courts below, and with appellees, that Minnesota's Charitable Solicitations Act (hereafter "Act") is an impermissible "religious gerrymander", in violation of the establishment clause of the First Amendment. The Act is a complex regulatory scheme designed to prevent fraudulent or deceptive practices by charitable organizations, but exempts some religious organizations from certain registration and disclosure requirements. As the courts below found, that exemption violates the establishment clause because it has the improper purpose and effect of favoring exempted religions over unexempted religions.[1/]

1/ The Act exempts a religious society or organization which received more than half its contributions "(1) from persons who are members of the organization; or (footnote continued on following page)

This brief will not, however, address the validity of that exemption, but will urge another ground for affirmance that was raised below but not addressed by the Eighth Circuit.[2/] If the Court does not find the Act invalid on establishment grounds, it must find the Act unconstitutional on another ground, excessive entanglement of church and state, or at least remand for consideration of that ground. The Court has struck down statutes providing public aid to religious organizations because the government entanglement with religion was excessive, but has never decided whether a regulatory scheme

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(footnote continued from preceding page)
(2) from a parent organization or affiliated organization; or (3) from a combination of the sources listed in clauses (1) and (2)." Minn.Stat. §309.515, subd. 1(b).

2/ The Eighth Circuit entered an order limiting consideration of constitutional issues to those addressed in its opinion. 637 F.2d 562, 564 n.3 (1981).

such as the Act, which does not involve public aid, may nevertheless be invalid because of excessive entanglement. This case presents an appropriate occasion for the Court to settle the constitutionality of a comprehensive scheme of disclosure and regulation when applied to religious organizations.

I. The Religion Clauses are violated by statutes which either advance or inhibit religion. Committee for Public Education v. Nyquist, 413 U.S. 756, 788 (1973); Walz v. Tax Commission of New York, 397 U.S. 664, 669 (1970). Statutes which entangle government in the affairs of religious organizations are invalid because they may have an impermissible inhibiting effect, deflecting religious organizations from religious activities and warping decisions in a direction decreed by state, not church. Walz, supra,

397 U.S. at 669-670; Lemon v. Kurtzman, 403 U.S. 602, 620 (1971). No actual inhibition need be proved for entanglement to be unconstitutional; regulation need only present the potential for government direction of religion. Lemon, supra, 403 U.S. at 620-621. This Court has relied on an impermissible entanglement analysis to forbid three types of government activity required by the Act. They include:

(A) Comprehensive and continuing government surveillance and evaluation of religious organizations to enforce statutory or administrative standards, Lemon, supra, 403 U.S. at 619-622. The Act's disclosure requirements, investigatory powers and regulatory standards, enacted to guard against fraud, create continuing government scrutiny of the financial decisions of religious organizations.

(B) Government interference with the shaping and administration of a church's religious affairs, Kedroff v. St. Nicholas Cathedral, 344 U.S. 94, 115-121 (1950). The Act's restrictive spending limitations and burdensome filing requirements will interfere with the freedom of churches to shape and administer their religious missions.

(C) Investigation and interpretation of religious doctrine by civil authorities. Presbyterian Church v. Hull Church, 393 U.S. 440, 450 (1968). The Act's mandate that expenditures be "reasonable" involves the state in investigation and interpretation of religious doctrine when it attempts to discover the bases for church expenditures.

II. No reason has been asserted that would justify the entanglement required by the Act. In areas touching on religion and other First Amendment freedoms, broad

prophylactic rules are impermissible, and the state must further its interests by means calculated to minimize intrusions on protected freedom. In Re Primus, 436 U.S. 412, 432 (1978); NAACP v. Button, 371 U.S. 415, 438 (1963); Wisconsin v. Yoder, 406 U.S. 205, 215 (1972); Sherbert v. Verner, 374 U.S. 398, 407 (1963). The state has not demonstrated, and could not on this record assert, that its interests could not be fully and effectively served by far narrower statutes punishing forbidden conduct, such as fraud, while leaving protected activity free of continuous and intrusive state oversight.

ARGUMENT

I. THE ACT REQUIRES EXCESSIVE ENTANGLEMENT OF CHURCH AND STATE IN VIOLATION OF THE FIRST AMENDMENT.

Statutes that entangle government in the affairs of religious organizations are invalid because they may lead to

government control of churches or government restraint of religious practices. Walz v. Tax Commission of the City of New York, 397 U.S. at 669-670; Lemon v. Kurtzman, 403 U.S. at 620. The Court has found the potential for government direction of churches sufficient to rule a statute unconstitutional. Id. at 620-621. Due to the "self-perpetuating and self-expanding propensities" of modern government, regulations that are not historically well-established are particularly suspect. Id. at 624. See Walz, 397 U.S. at 676-677.

Although the permissible limits of entanglement have been called "blurred and indistinct", Lemon, 403 U.S. at 614, the Court has identified three types of prohibited entanglement. The first, surveillance and evaluation of religious organizations, has been called an "inde-

pendent evil", id. at 624-625, but may also signal the presence of the other types of impermissible entanglement -- government interference in religious affairs, and government investigation and interpretation of religious doctrine.

A. The Act Requires Comprehensive and Continuing Government Surveillance and Evaluation of Religious Organizations to Enforce Statutory and Administrative Standards.

Comprehensive and continuing government surveillance and evaluation of religious organizations toenforce statutory or administrative standards has been prohibited under the Religion Clauses. Meek v. Pittenger, 421 U.S. 349, 367-370 (1975) (state supply of specialized educational services on religious-affiliated school premises fostered an impermissible entanglement because of the "prophylactic contacts" required to ensure that teachers played "a strictly nonideological role"); Lemon, 403

U.S. at 619-621 (state-funded supplements to salaries of teachers in secondary and elementary church-affiliated schools created created excessive entanglement because they entailed state surveillance, inspection and evaluation of schools to ensure that state funds were not supporting religious teaching and to determine school expenditures attributable to religious activity.)[3/] In fact, the Court has upheld

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3/ Only very limited government monitoring is allowed. Fire inspection, building and zoning regulations and compulsory school attendance laws are necessary and permitted. Lemon, 403 U.S. at 614. Limited oversight of church-affiliated schools which accept government aid is also permitted, when the schools are not pervasively religious, Roemer v. Maryland Public Works Board, 426 U.S. 736, 764-66 (1976), or where the type of aid makes excessive government involvement unnecessary. Committee for Public Education v. Regan, 444 U.S. 646 (1980).

some laws exempting religious organizations from their coverage precisely because a different rule might require excessive entanglement. Walz, 397 U.S. at 674-675.

The Act creates the kind of comprehensive and continuing government surveillance and evaluation of religious organizations that is prohibited by the Religion Clauses. It creates a complex regulatory scheme of government inquiry into the fund-raising and expenditures of religious and charitable organizations, ostensibly to prevent fraudulent and deceptive practices. The prophylactic methods employed by the Act include complete and detailed financial disclosure requirements, unlimited government investigatory powers, and imposition of a "reasonableness" standard to govern expenditures. Before solicitation may occur, the Act requires a detailed

registration statement,[4/] annual financial

4/ The "Registration Statement" must include: the organization's legal name; the name or names under which it solicits contributions; form of organization; address of principal office in state or address of person having custody of the books; names and addresses of officers, trustees and the chief executive officer; federal and state tax exempt status; denial at any time of right to solicit contributions; date on which accounting year ends; general purposes of the organization; general purposes for which contributions to be solicited will be used; methods of solicitation; copies of contracts between charitable organizations and professional fundraisers relating the fundraisers' profits; the group or individual having final discretion as to distribution and use of contributions; the amount of total contributions; and a financial statement for the preceding 12 month period. Minn. Stat. §309.52, subd. 1(a) - (o); subd. 2.

reports,[5/] licensing of professional fundraisers,[6/] and disclosure of any other information the Minnesota Department of

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5/ The Annual Report must include: a financial statement for the preceding 12 month period of operation, a balance sheet, statement of income and expense, and statement of "functional expenses." Full disclosure must be made of total receipts and income from all sources; cost of management, "general", and fundraising ; cost of public education; fund or properties transferred out of state with an explanation; total net amounts disbursed for each major purpose, charitable or otherwise; and names and financial compensation or profit of fundraisers. Minn.Stat. §309.53, subd. 2, subd. 3.

6/ The statute requires professional fundraisers to be licensed and permits the department to require bonding under "such terms and conditions as the department determines are necessary and appropriate" for the public's protection. It also permits the department to require fundraisers to produce financial reports. Minn.Stat. §309.531.

Commerce ("Department"), in its discretion, may require to "promote fairness." (Minn. Stat. §§309.52 - 309.531). All documents that must be filed become part of the public record. (Minn.Stat. §309.54, subd. 1). In addition, the Act gives the Department unlimited investigatory powers, enabling the Department's commissioner to compel testimony of witnesses or production of documents if he thinks any person is about to violate any provision of the Act. (Minn. Stat. 309.533).

The Act's use of disclosure requirements and investigatory powers involves the state in excessive entanglement with the religious organizations it seeks to regulate. Like the activities of church affiliated schools, see Meek v. Pittenger, 421 U.S. at 367-370, and Lemon, 403 U.S. at 619-621, the activities of the reli-

gious organizations regulated by the Act are pervasively religious. Church fund-raising is a protected religious activity, Cantwell v. Connecticut, 310 U.S. 296 (1940), and certainly a church's expenditure policies go to the heart of its religious mission, just as a charitable organization's expenditures reflect its charitable purposes. Cf. Village of Schaumberg v. Citizens for a Better Environment, 444 U.S. 620, 635 (1980).

In addition, the Act involves the kind of ongoing, comprehensive inspection the Court warned against in Lemon v. Kurtzman. Like the need to prevent state funding of religious teaching or the task of determining secularly-based expenditures, Minnesota's goals of ensuring full disclosure and "reasonable" expenses necessitate continuing state scrutiny of the administration and finances of religious organ-

izations. At the very least, the Act requires that every dollar of church income and every dollar of church expenses be documented, disclosed to the state and opened to the public. Even greater intrusion is permitted, however. The Act gives the Department carte blanche to interrogate any church official about any church matter and examine any church document in quest of information about violations it thinks may occur. As the Court said about government auditing of school financial records in Lemon v. Kurtzman, 403 U.S. at 620:

> This kind of inspection and evaluation of the religious organization is fraught with the sort of entanglement that the Constitution forbids.... [w]e cannot ignore here the danger that pervasive modern governmental power will ultimately intrude on religion and thus conflict with the Religion Clauses.

B. Government Interference With the Shaping and Direction of a Church's Religious Affairs.

Undue government interference with the shaping and administration of a church's religious affairs is impermissible. NLRB v. Catholic Bishop of Chicago, 440 U.S. 490, 503-504 (1979) (jurisdiction over church-affiliated schools would create serious First Amendment questions because the NLRB's secular aims might conflict with and subvert a school's religious mission); Serbian Orthodox Diocese v. Milivojevich, 426 U.S. 696, 698 (1976) (civil courts could not decide dispute over the defrocking of a bishop but had to defer to the decision of the highest church authority); Kedroff v. St. Nicholas Cathedral, 344 U.S. at 115, 120 (New York State could not remove a church from central Russian Orthodox church and award it to American branch

since the question was "strictly a matter of ecclesiastical government.")

Application of the Act to religious organizations interferes with their ability to shape their fundraising, management and prosyletizing activities. It imposes a secularly-determined standard of "reasonableness" (Minn.Stat. 309.555) on expenditures for fundraising, general and management costs, and salaries,[7/]

7/ The Act requires religious organizations subject to registration requirements to expend only a reasonable amount for management, general costs and fundraising costs. An amount in excess of 30% of total income and revenue is presumed unreasonable and may be challenged. Minn.Stat. §309.555, subd. 1a. The religious organization, however, may defend by claiming extenuating circumstances. Minn.Stat. §309.555, subd. 5. The Department, as explained in Point I.B., may attempt to impose its own secular standards of reasonableness on the religious organization. Or, as Point I.C. illustrates, it may attempt to discover whether a church's religous tenets warrant expenses that exceed the Act's presumptive limitations. Either of these courses is constitutionally prohibited.

enforcing it with threats of investigation, hearings, prohibition of fund-raising, receivorship and misdemeanor charges if the organization does not comply. (Minn.Stat. §§309.532 - 309.534, §§309.58 - 309.581).

The Court has recognized that imposition of secular standards by a government regulatory agency may interfere with the constitutional right of a religious organization to freely shape its religious mission. NLRB v. Catholic Bishop of Chicago, 440 U.S. at 503-504.[8/] It found that

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8/ The Court's decision rested on statutory grounds and therefore did not reach the issue of the constitutionality of NLRB jurisdiction. The Court concluded that "Congress did not contemplate that the Board would require church-operated schools to grant recognition to unions as bargaining agents for their teachers." The Court noted, however, that "the record afford abundant evidence that the Board's exercise of jurisdiction over teachers in church-operated schools would implicate the guarantees of the Religion Clauses." NLRB v. Catholic Bishop of Chicago, 440 U.S. at 506 -507.

NLRB jurisdiction over church-affiliated schools would entail mandatory bargaining by the schools over "nearly everything" that went on in the schools. Since the schools were pervasively religious, the Court acknowledged that mandatory bargaining over "nearly everything" would encroach upon the clergy-administrators' autonomy to shape and direct the school's religious mission and would inevitably lead to conflicts between clergy and government. Id. at 503.

Application of the Act to religious organizations portends similar conflicts between churches and government. Like NLRB imposition of mandatory bargaining, the Act's comprehensive financial disclosure provisions and "reasonableness" standard subject all of a church's activities to state inquiry and regulation. A church is no longer free to make autonomous decision about raising and spend-

ing funds; its actions are instead subject to state oversight and evaluation. However, because the Department's aims are secular, they may conflict with a church's religious goals. The priorities and value judgments of a government agency and a religious organization are likely to reflect different concerns.

Imposition of secular standards by the Department also conflicts with the constitutional principle that civil authorities may not review or overturn the decisions of the highest church authorities "on matters of discipline, faith, internal organization, or ecclesiastical rule, custom or law." Serbian Orthodox Diocese, supra, 426 U.S. at 713. The principle reflects a judgment that religious organizations should have "power to decide for themselves, free from state interference, matters of church government,

as well as those of faith and doctrine." Kedroff, supra, 344 U.S. at 116.

In addition, a spending limitation may burden a church's ability to spread its religious teaching. The Court has recognized that a spending restriction reduces the quantity of expression in which an organization or individual may engage. Buckley v. Valeo, 424 U.S. 1, 19 (1976). A government-decreed spending limitation on salaries may impede a church's proselytizing efforts when financial support of ministers or church proselytizers constitutes a large part of its budget. Cf. Village of Schaumberg v. Citizens for a Better Environment, 444 U.S. at 635-636. A limit on fundraising costs may also inhibit a church's ability to extend its message: a new church, intent on expansion, would be prohibited from using all of its resources to raise additional

funds.[9/]

Thus, if the Department imposes its secularly-based decisions on a religious organization, the government is interfer-

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9/ Even without the spending limitations, the Act is unconstitutionally burdensome. The Court has struck down state licensing requirements and fees when they "unreasonably obstruct or delay" solicitation. Cantwell v. Connecticut, 310 U.S. at 305 (solicitation conditioned upon state approval of the organization's cause as religious); Murdock v. Pennsylvania, 319 U.S. 105 (1943) (tax on religious canvassing and soliciting). Although the Act does not mandate the payment of a tax before solicitation can take place, its requirements of registration, annual filing, and licensing and bonding of professional fundraisers place an unwarranted economic burden on religious organizations, entailing, among other costs, the use of expensive and time-consuming bookkeeping and reporting practices. Moreover, the potential costs of an investigation or litigation over failure to properly disclose, or other violations of the Act, are unpredictable. Those certain and potential expenses could discourage a new or poorly-financed religious organization from attempting to qualify to raise funds within the state, and thus inhibit its ability to carry out its religious mission.

ing with a church's freedom to shape and direct its religious mission. A church will inevitably be faced with abandoning its religious mission or being subject to the Act's sanctions: prohibition of fundraising, receivorship, or misdemeanor charges.

The Act will result not only in overt coercion of churches but also in more subtle coercion. The existence of disclosure requirements and the possibility of investigation and sanctions may create a chilling effect, prompting religious organizations to "steer far wider of the unlawful zone" created by the statute than the state could constitutionally require. Cf. Speiser v. Randall, 357 U.S. 513, 526 (1958). Every time a religious organization makes a decision about fundraising or spending, it must consider whether the Department will find its disclosure adequate or its expenses "reason-

able". To minimize friction with the Department and to avoid the risk of investigation or expensive litigation, a church may tailor its conduct to avoid conflict. Thus, a church's financial decision-making may evolve in a direction decreed not by its religious mission, but by the state. The knowledge that its financial records are open to press and public may also influence a church's actions. Individuals may be wary of becoming church officers knowing their names, financial decisions and salaries will be a matter of public record, particularly if a religion is unpopular. Cf. NAACP v. Alabama, 357 U.S. 449, 462 (1958); Buckley v. Valeo, 424 U.S. at 69-72.

C. Investigation and Interpretation of Religious Doctrine by Civil Authorities.

Investigation and interpretation of religious doctrine by civil authorities has been found to violate the Religion Clauses. Jones v. Wolf, 443 U.S. 595, 603-604 (1979) (civil courts could not decide a property dispute among members of the Presbyterian Church by interpreting a religious law, but could use only "neutral principles," such as trust and property law); Presbyterian Church v. Hull Church, 393 U.S. 440, 449-450 (1968) (civil courts could not adjudicate a church-related property dispute by deciding whether a church had departed from tenets of faith and practice); Cf. NLRB v. Catholic Bishop, 440 U.S. at 502 (NLRB jurisdiction over church-affiliated schools created a significant risk that the Religion Clauses would be violated because the Board would need to invest-

igate and resolve religious questions).

The Act's mandate that a religious organization maintain "reasonable" management costs, general costs and fundraising costs" could well involve the Department in constitutionally prohibited investigation and interpretation of religious doctrine. The Act presumes that costs exceeding 30% of total revenues are unreasonable. An organization, however, is permitted to argue that its expenses are justified by mitigating circumstances. When that defense is based on religious grounds, an inevitable occurrence when a religious organization is challenged, the government may become involved in deciding religious issues.

In NLRB v. Catholic Bishop, 440 U.S. at 502, the NLRB assumed jurisdiction over church-affiliated schools and alleged that they were engaged in unfair

labor practices. The schools responded that the practices deemed "unfair" by the Board were mandated by their religious creed. Since resolution of these claims would involve investigation into and resolution of doctrinal questions, the Court said such inquiry "may impinge on rights guaranteed by the Religion Clauses."

Application of the Act to religious organizations raises the same constitutional problems created by the NLRB jurisdiction over church-affiliated schools. Any consideration of a claim that expenditures of greater than 30% are required by a church's religious calling necessarily involves investigating and interpreting religious doctrine. Unless it imposes its own secular views or automatically accepts the church's claim, the Department must evaluate church tenets to discover if

expenses are mandated. Such evaluation of religious doctrine has been found unconstitutional when practiced by courts and cannot be practiced by the Department. Jones, supra, 443 U.S. at 603-604; Presbyterian Church, supra, 393 U.S. at 449-450. Doctrinal investigations may also involve the Department in other unconstitutional practices, such as discriminating against groups because they hold unpopular religious views, Fowler v. Rhode Island, 345 U.S. 67, 69-70 (1953), or deciding the truth of a religious belief, United States v. Ballard, 322 U.S. 78, 86-87 (1943).

The spectre of the Department deciding doctrinal issues is not far-fetched. For some religious organizations, high expenses for salaries to pay those spreading religious teaching

may be an integral part of their religious mission. Cf. Village of Schaumberg v. Citizens for a Better Environment, 444 U.S. at 635-636. Fund-raising expenses may also be influenced by religious doctrine. For example, the Unification Church combines fund-raising with prosyletizing, considering both part of its religious mission and the essence of a religion composed of itinerant preachers. It would be impossible for the Department to question its fundraising expenses without investigating and interpreting its religious doctrine, and thus violating the Religion Clauses.

II. MINNESOTA CAN DEMONSTRATE NO STATE INTEREST SUFFICIENT TO JUSTIFY ITS EXCESSIVE ENTANGLEMENT AND INTERFERENCE WITH RELIGION

Amici agree that Minnesota can prohibit civil fraud by religious organizations. But the substantial disclosure requirements, investigatory powers and sanctions created by the Act are overly burdensome and far more intrusive than necessary to achieve that objective. Since the Act impermissibly entangles government with religion, the state must demonstrate that no less restrictive means are available to serve its interests. Wisconsin v. Yoder, 406 U.S. 205, 215 (1972); Sherbert v. Verner, 374 U.S. at 407.

No interest has been asserted that would justify the entanglement required by the Act. The purpose of the Act is to prevent fraudulent or deceptive

practices by charities. Minnesota's interests, however, can be accomplished without the Act's onerous requirements. As in the areas of free expression, broad prophylactic rules such as mandatory disclosure and a "reasonableness" standard are suspect, and the state must further its interests by means calculated to minimize intrusion on protected freedoms. In Re Primus, 436 U.S. 412, 432 (1978); NAACP v. Button, 371 U.S. at 438; Village of Schaumberg v. Citizens for a Better Environment, 444 U.S. at 637. Here the state can satisfy its legitimate interests by prosecuting religious organizations if they commit fraudulent acts during their fundraising or solicitation efforts. Schneider v. State, 308 U.S. 147, 164 (1939); Cantwell v. Connecticut, 310 U.S. at 306 .

In fact, the practice of some federal agencies has been to exempt religious organizations from filing and disclosure requirements, leaving them subject only to antifraud provisions.[10/] Since Minnesota has not demonstrated, nor could it on this record assert, that its interests could not be served by far narrower statutes punishing forbidden conduct such as fraud, the Act is unconstitutional when applied to religious organizations.

10/ For example, the Internal Revenue Service accords religious organizations tax exempt status without requiring them to apply for such status. 26 U.S.C. §§501(c)(3), 6033. The Securities and Exchange Commission rules exempt from registration requirements religious organizations issuing securities "no part of the net earnings of which inures to the benefit of any person, private stockholder, or individual." 15 U.S.C. §77c(4). Although both agencies are empowered to initiate investigations if they have reason to suspect the perpetration of fraud, 26 U.S.C. §§7602, 7605, 15 U.S.C. §77q, the initial exemptions from filing properly minimizes governmental intrusion into religious affairs.

CONCLUSION

The judgment below should be affirmed, or the case remanded for consideration of Appellees' claims that the Act requires execessive governmental entanglement.

Respectfully submitted,

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IN THE

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October Term, 1980

JOHN R. LARSON, Commissioner of Securities, Minnesota Department of Commerce; WARREN SPANNAUS, Minnesota Attorney General; Individually and in their official capacities,

Appellants,

v.

PAMELA VALENTE, LARRY BARBER, LARRY HAFT, KIMBERLY KORMAN, and HOLY SPIRIT ASSOCIATION FOR THE UNIFICATION OF WORLD CHRISTIANITY,

Appellees.

BRIEF OF THE AMERICAN JEWISH CONGRESS, *AMICUS CURIAE*

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QUESTION PRESENTED

Whether a state statute regulating charitable solicitations under which religious organizations which solicit more than half of their funds from the public must register with the state and file periodic financial statements, while religious organizations which look to the public for less than half of their support are exempt from those requirements, violates the Establishment Clause.

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INTEREST OF THE AMICUS

This brief amicus curiae of the American Jewish Congress in support of the Appellees is submitted with the consent of the parties.

The American Jewish Congress is a membership organization of American Jews founded in 1918 to protect the religious, political and economic rights of Jews and to promote the principles of democracy. It is committed to the preservation of the great freedoms secured by the First Amendment, and especially the unitary freedoms secured by its Establishment and Free Exercise Clauses.

The American Jewish Congress has participated in a large number of church-state cases before this and other courts. It believes that its deep commitment to the

First Amendment and its accumulated experience in this field permits it to make a unique contribution to the discussion of the Constitutional issues involved in this case.

STATEMENT OF THE CASE

Four individual members of the Holy Spirit Association for the Unification of World Christianity [the Unification Church] brought suit, pursuant to 42 U.S.C. § 1983, in the United States District Court for the District of Minnesota seeking a declaration that the Minnesota Charitable Solicitations Act, Minn. Stat. §§ 309.50-309.61 (1980) [the Act], violates the First and Fourteenth Amendments of the United States Constitution and seeking an injunction prohibiting its enforcement. Named as defendants were the two state officials charged with enforcing the Act.

The Act prohibits charitable organizations, including religious ones, from soliciting contributions from persons in the State unless the organization has filed

a registration statement setting forth certain information regarding itself, its purposes, its methods of solicitation, the ends to which contributions will be put, the amount of contributions it has received, and "other information which might be required by the state." The initial registration statement must include a financial statement of the organization's operations and, with certain exceptions not relevant here, an organization which is required to file a registration statement must also file annual financial reports.

Under a series of statutory exemptions, certain charitable organizations are exempt from the registration and annual reporting requirements. In fact, prior to 1978, the Act, in effect, exempted all religious organizations. A 1978 amendment, however, eliminated the blanket exemption for

religious organizations. Under the amended statute, Section 309.515(b) of the Act, a special exemption is still carved out for religious organizations, but only for those which receive more than half of their contributions from persons who are members of the organization, or from a parent or affiliate of the organization or from a combination of those sources.

Plaintiffs' complaint, which was accompanied by a motion for a preliminary injunction, raised a number of challenges to the constitutionality of the statute, including a claim that the disparate treatment of religious organizations under Section 309.515(b) violated the Establishment Clause of the First Amendment.

Before the application for a preliminary injunction was heard, the State of Minnesota filed suit in state court against

the Unification Church, charging that the Church was in violation of certain provisions of the Act. By stipulation, the Unification Church was joined as a plaintiff in the federal suit, and the state court action was stayed.

The District Court, following the Report and Recommendation of the United States Magistrate who heard the application for a preliminary injunction, granted the plaintiffs a preliminary injunction. Thereafter, that court granted summary judgment and permanently enjoined the enforcement of the Act as to any and all religious organizations.

The Court of Appeals for the Eighth Circuit, limiting its review to issues actually decided by the District Court and declining to rule on the other theories of unconstitutionality asserted by the

plaintiffs, affirmed the District Court's ruling that the Act's distinction between religious organizations which receive more than half of their contributions from members and those which receive less than half from their members was invalid under the Establishment Clause.

The state appealed. This Court noted probable jurisdiction on June 1, 1981.

SUMMARY OF ARGUMENT

A neutrality principle lies at the heart of the Establishment Clause. Accordingly, governmental regulation of religious organizations or their activities must, at minimum, apply in a neutral, evenhanded, non-discriminatory manner. The exemption from regulation of religious organizations which raise more than half of their funds from members violates this neutrality principle, and therefore violates the Establishment Clause.

The same conclusion follows if the statutory classification and exemption are analyzed under the familiar tri-partite test. The statute fails under each prong of that test.

The exemption appears to be a purposeful religious gerrymander. Sparse as

the legislative history may be, it supports the view that the legislative purpose was to subject to regulation those religious groups, such as the Appellee Unification Church, whose solicitations in public places have been particularly controversial.

The effect of the statutory classification is to create two classes of religious organizations and to treat them differently. The criteria which determine which class a religious organization falls into are inherently religious.

The exemption is not closely tailored to the state's articulated aim -- to regulate only those organizations where adequate internal safeguards do not exist. Even if there were a rational relationship between the statute and that goal, in this sensitive First Amendment area, mere rational relationship between means and ends is

not enough to satisfy the Constitution's mandate.

Finally, the statutory classification fosters an excessive governmental entanglement with religion. Because the criteria which determine inclusion or exemption have religious content, the state, in enforcing the statute, may be compelled to make determinations which it is incompetent to make.

ARGUMENT

I. The Statute Violates the Establishment Clause's Mandate of Scrupulous Government Neutrality Among Religions

Undoubtedly, not all regulation of the activities of churches is proscribed by the Religion Clauses of the First Amendment.

> A system of government that makes itself felt as pervasively as ours could hardly be expected never to cross paths with the church .... [O]ur State and Federal Governments impose certain burdens upon, and impart certain benefits to, virtually all our activities, and religious activity is not an exception.

Roemer v. Board of Public Works, 426 U.S. 736, 745 (1976). At the same time, the Free Exercise and Establishment Clauses of the First Amendment do operate to place limits on the scope and nature of state

regulation of religious organizations and their activities. Under those clauses, "a hermetic separation" of church and state may not be required. Id. at 746. But "scrupulous neutrality as among religions" is. Id. at 745.

Just as reasonable time, place and manner restrictions which serve significant governmental interests and which apply in an "even-handed," "non-discriminatory fashion" "to all alike" may not offend the free speech guarantees of the First Amendment, see Heffron v. International Society for Krishna Consciousness, Inc., U.S. , 101 S.Ct. 2559 (1981), even-handed, non-discriminatory regulation of religious solicitations may, under some circumstances, exist without offense to the Religion Clauses. But rules and regulations

The statute is not evenhanded and non-discriminatory in its treatment of religious organizations and it therefore violates the Establishment Clause. "If the purpose or effect of a law ... is to discriminate invidiously between religions, that law is constitutionally invalid ...." Braunfeld v. Brown, 366 U.S. 599, 607 (1961).

The manifest violation of the First Amendment's neutrality principle is sufficient to invalidate the Minnesota Act. Not surprisingly, the same conclusion of invalidity emerges if the statute is analyzed under the now familiar tri-partite test for determining whehter a challenged statute is permissible under the Establishment Clause. "First, the statute must have a secular legislative purpose; second, its principal or primary effect must be one that neither

affecting the activities of religious organizations which are not evenhanded, which do not apply to all alike, and which are discriminatory either on their face or as applied are forbidden.*

The statute at issue here purports to regulate charitable solicitations, including those of churches. It does so, in part, through imposition of detailed registration and reporting requirements. These requirements, however, apply only to certain religious organizations. Under the statutory scheme, other organizations are exempt.

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* The amicus expresses no opinion as to whether the registration and reporting requirements would be constitutional if the exemption for religious organizations with a preponderance of member or affiliate funding were eliminated. We do note that the Appellees have urged that the statute suffers from a number of other constitutional defects and we think their objections are not insubstantial.

advances nor inhibits religion ....; finally, the statute must not foster an excessive government entanglement with religion." Lemon v. Kurtzman, 403 U.S. 602, 612-13 (1971). If a statute violates any of these three tests, it must be struck down. The amicus submits that the challenged statute violates all three.

II. The Statute Violates Each Prong of the Tri-Partite Test

A. The Exemption of Some Churches from the Regulatory Scheme and the Inclusion of Others Serves No Valid Secular Purpose

There can be little doubt that the Minnesota Act, viewed as a whole, has a valid secular purpose -- the prevention of fraudulent and deceptive conduct in the solicitation of funds in the name of charity and the disclosure of facts which may be useful to the public in evaluating such

solicitations. See Heffron v. International Society for Krishna Consciousness, Inc., supra; Village of Schaumburg v. Citizens for a Better Environment, 444 U.S. 620, 636 (1980). But, in order to withstand scrutiny under the Establishment Clause, it is the 1978 amendment's classification of religious organizations on the basis of the percentage of funds they receive from members and non-members, and their inclusion in, or exclusion from, regulation on that basis, which must pass the test of valid secular purpose. The classification does not pass the test.

The Court of Appeals ruled that there exists no sound and justifiable purpose for the statute's system of classification. It determined that the classification appeared to be a religious gerrymander, reflecting favoritism for religious organizations

which obtain some, but less than half, of their funds from the public. Appellants attack that ruling, charging that it rests exclusively upon unwarranted assumptions concerning legislative motive.

Appellants' own recounting of the legislative history, however, provides strong support for the assumptions they call unwarranted. According to the Appellants, the 1978 amendment's change in the treatment of solicitation by religious organizations received little legislative attention. Jurisdictional Statement at 12. What little legislative history exists, however, suggests that the classification was designed with a view towards regulating the fundraising activities of particular "disfavored" religious groups.

In the Senate Judiciary Subcommittee hearing on the bill, it was stated that the

amendment would allow the state to regulate those organizations soliciting in airports and in the streets. Id. at 13 The question of the regulation of airport solicitations arose as well in a House committee meeting. Id. It is not speculation to conclude from these comments that the legislators who enacted this bill purposefully intended to subject to regulation those religious organizations, such as Appellee Unification Church, whose airport and street solicitations are well-known and little liked. At the same time, the exemption provision can only reflect the legislature's clear purpose to relieve other religious groups of the regulatory burden.

This Court's well-founded reluctance to inquire into a statute's real purpose or its drafters' "true motives" where the statute can rationally be thought to promote

legitimate ends has no place where a statute is challenged as violative of the Establishment Clause. Valid secular purpose is a sine qua non of constitutional validity. See Stone v. Graham, U.S. 101 S.Ct. 192 (1980); Epperson v. Arkansas, 393 U.S. 97 (1968); L. Tribe, American Constitutional Law 229 (1978).

The invalid purpose -- to regulate certain churches and to release others from regulation -- appears on the face of the statute. The legislative history supports what logic suggests -- that the groups chosen to be regulated were those sects, like the Appellee, which are unpopular in some quarters. On the other hand, the secular purpose now advanced by the state for the exemption -- regulation of only those organizations as to which membership funding is too insubstantial to supply

sufficient internal safeguards against fraudulent and deceptive fundraising -- finds no support at all in the legislative history cited by the Appellants. It appears to be no more than a post hoc rationalization designed to explain away the improper legislative purpose.

B. The Exemption Has An Impermissible Effect

The uncontrovertable effect of the statute is to create two classes of religious organizations. The churches within one class are subject to the onerous burdens of registration and periodic reporting. The churches in the other class are left alone, exempt from those obligations. Whether or not the dividing line between the two classes coincides with the line between well-established and newer religions or with the line between favored or disfavored sects, the

First Amendment does not tolerate the drawing of any such line by the State.

This Court has written:

> Almost a hundred years ago in Minor v. Board of Education of Cincinnati, Judge Alphonso Taft, father of the revered Chief Justice, ... stated the ideal of our people as to religious freedom as one of "absolute equality before the law, of all religious opinions and sects .... The government is neutral, and, while protecting all, it prefers none, and it disparages none."

School District of Abington Township v. Schempp, 374 U.S. 203, 214-15 (1963) (footnote omitted). That principle has been reaffirmed repeatedly. "State power is no more to be used so as to handicap religions than it is to favor them." Everson v. Board of Education, 330 U.S. 1, 18 (1947).

The classification in the challenged statute protects, prefers, and favors some

churches while it disparages and handicaps others. Indeed, the state implicitly concedes as much for, in attempting to justify the exclusion of religious organizations which receive more than half of their funding from members, the state asserts that it does so to remove the onus of registration where other adequate safeguards exist. Were the registration and reporting requirements not burdensome, there would be no reason for the exemption.

The statute and its invidious classification cannot be saved merely by calling them secularly-based.* In spite of the

* Appellants contend that Gillette v. United States, 401 U.S. 437 (1971), stands for the proposition that any legislation with a disparate impact on religious groups is permissible under the Establishment Clause so long as a neutral, secular reason to justify the law can be articulated. Plainly, that cannot be the law for such a rule would eliminate two-thirds of the tri-partite test. Gillette itself recognizes that the central purpose of the Establishment Clause is to ensure government neutrality in matters of religion. (cont.)

state's assertions to the contrary, the statute's classification is not, and cannot be, an entirely secular one.

A religious organization's membership structure, its funding base, and its fund-raising practices are inherently tied up with that organization's religious functions and beliefs. Some churches, for doctrinal reasons, are membership organizations. Others are not organized on a membership

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Unlike the conscientious objector statute at issue in Gillette, the statute challenged here expressly creates two classes of religious organizations and mandates different treatment of the two. And, unlike the legislative scheme at issue in Gillette, alternative legislative solutions exist. Other means exist for the state to prevent fraudulent solicitations and to promote public disclosure without increasing the danger of government entanglement and without enhancing the likelihood of erratic decisionmaking, the two dangers which only the statutory scheme at issue in Gillette could avoid. One means would be complete exemption of religious solicitations, as existed in Minnesota prior to 1978, and vigorous enforcement of criminal and civil fraud statutes. The public interest in promoting public disclosure might be adequately served by permitting registration and reporting by religious organizations on a voluntary basis.

basis. Some religious organizations, again for doctrinal reasons, rely upon their members for financial support. Other religious beliefs of other religious organizations call for evangelizing and solicitation of persons outside the church. Indeed, for some religions, solicitation of donations is itself a religious ritual.

Accordingly, even if the line chosen by the State was chosen for purely secular purposes, its effect is inevitably to classify churches, and to treat them differently, on the basis of criteria with religious content.

It is true that legislation which is addressed to a wholly secular problem, but which does not affect all religions identically, does not inevitably violate the Establishment Clause. But legislation designed to regulate religious groups and

their operations is surely suspect. The State must in those cases bear a heavy burden of justification if the statute is to survive scrutiny under the Establishment Clause. See Surinach v. Pesquera de Busquets, 604 F.2d 73 (1st Cir. 1979). The line which the statute draws at best only roughly serves the State's asserted interests in protecting potential donors from fraudulent solicitations and promoting disclosure to the public. In this sensitive First Amendment area, rough justice is not enough.

According to the State, the exemptions are tied to the Act's purpose of providing protection and information to the public, but only in the case of an organization which receives one hundred percent membership funding does the exemption serve that purpose. In organizations funded both

by members and non-members, but primarily by the former, member-donors may be protected through adequate alternative safeguards in the form of a statutory right to inspect books and records but those safeguards, by their terms, cannot be invoked by non-member donors and cannot serve to promote disclosure to the public of an organization's financial affairs.

It is not necessarily the case that membership funding in excess of fifty percent will be accompanied by broadbased membership overview and supervision of a church's financial affairs. An organization will be exempt if one very generous member-donor contributes more than half of the organization's funding, even though the remainder of the organization's funds come from non-member contributors. In such a case, there is no reason to believe

that the membership at large will have a special interest in the disposition of the funds collected. Indeed, it is only the large contributor and the non-member public which have a financial interest in monitoring their disposition and the two may have different interests entirely. The exemption in that case does not operate to protect the public and to provide it with information; in fact, the exemption undercuts the statutory purpose.

C. The Exemption Fosters an Excessive Entanglement with Religion

A statutory scheme which required registration and reporting by all religious organizations soliciting funds from the public would result in some entanglement. We express no view on whether that entanglement would be excessive within the meaning of the Establishment Clause. Paradoxically,

though, the Minnesota scheme, which exempts some religious groups, is more entangling than a scheme which exempts none. This is so because the statutory basis for exemption is the percentage of contributions solicited from non-members. The resulting entanglement, though perhaps difficult to quantify, is excessive.

Inclusion or exemption depends on percentage of funds received from "members." The state, however, has chosen not to defer to each church's own definition of membership. Section 309.515(b) prohibits a church from defining members to include "those persons who are granted membership upon making a contribution as a result of a solicitation." Moreover, § 309.591 authorizes the Commissioner of Securities and Real Estate to make "such rules as are reasonably necessary to carry out [the] purposes of this chapter,"

including, apparently, additional, more comprehensive rules defining membership.

Indeed, the state must promulgate such regulations for there are no doubt churches which grant "membership" status to all those who provide financial support, or for which the concept of membership is entirely alien. See The Young Life Campaign v. Director of Employment, Cal. App. 3d , 176 Cal. Rptr. 23 (3d Dist. (1981) (court overturned agency determination that youth ministry was not a church for purposes of state unemployment taxes because it had no members).

Clearly, it is no business of the state to define church membership. In addition, any attempt by the state to insure that churches were not defining membership in violation of § 309.515, or of promulgated

regulations, would inevitably lead to improper, on-going surveillance of churches and their members of the type this Court has condemned elsewhere.* See, e.g., Walz v. Tax Comm'n, 397 U.S. 664 (1970); PEARL v. Nyquist, 413 U.S. 793 (1973).

Entanglement problems can arise in yet other, more mundane ways. How will the state deal with revenues from a collection plate, where there is no way to know whether members or non-members made the contribution? Might churches feel (or be) obligated to discontinue that practice? What about churches which receive or encourage anonymous contributions.

The resolution of these and other

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* This surveillance might well violate the Free Exercise Clause. However, because there are no Free Exercise issues now before this Court, we do not address that issue here.

similar questions will undoubtedly result in state supervision and regulation of, and interference with, religious activity on a continuing basis. Particularly because the legislature has given the agency charged with enforcement of the Act no guidance in resolving these questions, this entanglement is constitutionally objectionable.

CONCLUSION

For the reasons set forth above, the American Jewish Congress, amicus curiae, respectfully urges that this Court affirm the ruling of the Court of Appeals that Section 309.515(b) of the Act violates the Establishment Clause.

Respectfully submitted,

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No. 80-1666

IN THE

Supreme Court of the United States

OCTOBER TERM, 1981

JOHN R. LARSON, Commissioner of Securities, Minnesota Department of Commerce; WARREN SPANNAUS, Minnesota Attorney General; Individually and in their official capacities,
Appellants,

v.

PAMELA VALENTE, LARRY BARBER, LARRY HAFT, KIMBERLY KORMAN, and HOLY SPIRIT ASSOCIATION FOR THE UNIFICATION OF WORLD CHRISTIANITY,
Appellees.

On Writ of Certiorari to the United States Court of Appeals for the Eighth Circuit

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BRIEF OF AMERICANS UNITED FOR SEPARATION OF CHURCH AND STATE FUND, INC. AS AMICUS CURIAE

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QUESTIONS PRESENTED

Whether the Minnesota Charitable Solicitations Act violates the principles of neutrality, as guaranteed by the religion clauses of the First Amendment to the United States Constitution and whether Plaintiffs have standing where there has not been a finding that they are or represent a religious organization.

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Appellees.

On Writ of Certiorari to the United States Court of Appeals for the Eighth Circuit

BRIEF OF AMERICANS UNITED FOR SEPARATION OF CHURCH AND STATE FUND, INC. AS AMICUS CURIAE

INTEREST OF THE AMICUS CURIAE

Americans United for Separation of Church and State Fund, Inc. is a nonprofit corporation formed to maintain and advance civil and religious liberties through enforcement of the rights and privileges

granted by the First and Fourteenth Amendments to the United States Constitution.

Americans United Fund is governed by a board of trustees composed of members of many religious organizations as well as individuals who are members of no religious body but who are concerned with the preservation of the separation of church and state.

The Board of Trustees of Americans United Fund is composed of the Board of Trustees of Americans United for Separation of Church and State, a sister organization with members of various religious beliefs and no religious belief in all states of the United States, including the State of Minnesota. Americans United Fund is involved in extensive litigation of First Amendment free exercise and establishment issues throughout the United States.

Americans United for Separation of Church and State has been involved in almost every major case coming before this Court dealing with the question of the Establishment Clause of the First Amendment to the United States Constitution, including such cases as *Lemon* v. *Kurtzman,* 403 U.S. 602 (1971); *Committee for Public Education and Religious Liberty* v. *Nyquist,* 413 U.S. 756 (1973), and *Meek* v. *Pittenger,* 421 U.S. 349 (1975).

Americans United Fund is particularly interested in the issues raised in this case because it involves a statute which, in this organization's view, interferes with the Free Exercise rights of a new and somewhat unpopular religious group and at the same time places other religious organizations in a more favored position, the result of which violates the command of neu-

trality which the religion clauses of the First Amendment seek to guarantee.

SUMMARY OF ARGUMENT

The Minnesota Statute § 309.515 provides an exemption from the onerous requirements of the Minnesota Charitable Solicitation Law. The Statute specifically exempts religious organizations which raise more than half of their contributions from their membership or from affiliated organizations. Those religious organizations which raise more than half of their contributions from outside of their own group are required to comply with the disclosure provisions. The Court of Appeals and the District Court concluded that the Statute prefers some religions over others and that such preference conflicts with the Establishment Clause of the First Amendment.

Freedom of religion is protected by the First Amendment. It is among the fundamental liberties protected by the due process clause of the Fourteenth Amendment from impairment by the states. The religion clauses are to be broadly interpreted and envision broad objectives premised upon a colonial fear of sovereign intrusion into religious affairs.

This Court has established a three-part test as a guide to determine when the Establishment Clause has been violated. The Court has, however, pinpointed several activities which the Establishment Clause is directed against, including the placing of government prestige behind a particular religion and the employment of the political machinery of the government to gain preferred status for a religion or a belief. When the Court finds that a challenged activity impairs one

of these objectives of the Establishment Clause, that activity must be struck down.

Likewise the Free Exercise Clause requires that where a burden has been imposed upon the Free Exercise of religion by action of the state, that clause demands a searching examination of the government's claimed compelling state interest, and the impediment to those objectives that flow from an outright exemption for the individual.

The Free Exercise Clause at times even requires the state to take affirmative steps to remove barriers to the Free Exercise of religion by making special provisions for religious interests in order to relieve them from both direct and indirect burdens placed on the Free Exercise of religion. The religion clauses hold a preferred position in our hierarchy of values. When a preferred position is assigned to a constitutional right, two results flow. The presumption of constitutionality which generally exists is not sufficient to validate a statute which invades that right, and the preferred position status requires the use of the doctrine of reasonable alternative. The latter is a requirement that a statute be "narrowly drawn to prevent the supposed evil."

The religion clauses, which have a unified purpose of protecting religious freedom, mandate that government be neutral when it comes to competition between religious sects. This constitutionally required policy of neutrality is derived from an accommodation of the Establishment and Free Exercise Clauses.

The Establishment Clause, as interpreted by the courts today, is designed both to implement the Free Exercise of religion and to prevent civil strife result-

ing when government and religion interfere with one another. Any government action which has the effect of interfering with a religious organization is contrary to this principle of neutrality. The Free Exercise Clause is called upon when the negative effect of government presence is so great that the underlying statute or its administration is bound to be unduly burdensome upon religion. The legislature may go further than is constitutionally required under the Free Exercise Clause in an attempt to accommodate where government action has been involved in limiting the religious freedom of an individual or a religious group.

Here, it is clear that the Minnesota legislature was constitutionally correct in making an exemption for churches when adopting its regulatory provisions for solicitation. In fact, it might be properly argued that such an exemption was constitutionally required under the Free Exercise Clause. The Minnesota legislature, however, acted improperly when it failed to observe the principle of neutrality when granting the exemption and thus went beyond the parameters of constitutionally permissible legislation.

Because the legislation here brought into question has favored some religious groups over others. Plaintiffs, as citizens, should have the right to complain of the injury that they have sustained as a result of the state's violation of the Establishment Clause.

The "over breadth" doctrine has also been applied by this Court to accord standing when there has been a "chilling effect" upon the exercise of First Amendment rights. In this case Plaintiffs have clearly alleged that the criminal penalties of the state statute have sufficient consequences on their actions to constitute

the type of chilling effect which gives Plaintiffs standing to bring this action.

ARGUMENT

I.

THE EXEMPTION PROVISION OF THE MINNESOTA CHARITABLE SOLICITATIONS LAW, WHEN VIEWED IN THE CONTEXT OF THE DISCLOSURE PROVISIONS OF THE STATUTE, VIOLATES THE NEUTRALITY PRINCIPLES EMBODIED IN THE RELIGION CLAUSES OF THE FIRST AMENDMENT.

Minnesota Statute § 309.515 provides an exemption from the onerous requirements of the Minnesota Charitable Solicitations Law. Subsection (b) thereof specifically states that "religious organizations which raise more than half of their contributions from their membership or from affiliated organizations" are exempted from having to comply with the disclosure provisions of the Statute. As the Court of Appeals noted in its opinion:

> It is manifest that certain religious groups will suffer material burdens as a result of the obligations imposed by the Act and that certain other religious groups, not subject to the Act, by virtue of the predominance of membership funding, will enjoy complete exemption from the demands of registration or disclosure. We must conclude that the Minnesota Statute prefers some religions over others. Such preference is in conflict with the Amendment prohibiting establishment of religion by law, in the absence of compelling secular justifications like those sustained in *Gillette.*

637 F.2d 569.

Historically, Minnesota has exempted religious organizations from the provisious of the Charitable Solicitations Law. Between 1961 and 1978 registration

and financial reporting was required of religious organizations except "[a]ny group or association serving a bona fide religious purpose when the solicitation is connected with such a religious purpose . . . ." Minn. Stat. § 309.515 (1976). In 1978 the Minnesota Statute was amended in several respects. It was at this time that the exemption provision in question was enacted into law. See Minn. Laws 1978, ch. 601, § 5.

The constitutional fabric of our nation has woven within it the concept that religious freedom is to be protected as an exalted right. As the highly-respected, late constitutional law professor Paul Kauper stated: "Of all the constitutional guarantees, the protection of religious liberty has been the most exalted." P. Kauper, *Religion and the Constitution* 19 (1964).

The Chief Justice, referring to the preferential position of the First Amendment, stated it this way: "The values enshrined in the First Amendment plainly rank high 'in the scales of our national values,' . . . ." *NLRB* v. *Catholic Bishop of Chicago,* 440 U.S. 490 (1979).

It is basic that the free exercise of religion occupies a fundamental and preferred position. The freedom of religion, which is protected by the First Amendment, is among the fundamental liberties protected by the due process clause of the Fourteenth Amendment from impairment by the state. *West Virginia State Board of Education* v. *Barnette,* 319 U.S. 624, 638 (1943); *Murdock* v. *Pennsylvania,* 319 U.S. 104 (1943); *Abington Township School Dist.* v. *Schempp,* 374 U.S. 203 (1963); *Epperson* v. *Arkansas,* 393 U.S. 97 (1968).

The First Amendment provisions prohibiting an abridgement of religious freedom and prohibiting all laws respecting an establishment of religions are to be

broadly interpreted. *Everson* v. *Board of Education,* 330 U.S. 1 (1947).

The religion clauses envisioned broad objectives premised upon a general colonial fear of sovereign intrusion into religious areas. This Court has expressed its concern for the zealous protection of religious liberty when it suggested that the First Amendment "radiates . . . a spirit of freedom for religious organizations, and independence from secular control or manipulation—in short, power to decide for themselves free from state interference, matters of church government, as well as those of faith and doctrine." *Kedroff* v. *St. Nicholas Cathedral,* 344 U.S. 94, 116 (1952).

In *Everson* v. *Board of Education, supra,* this Court, for the first time, held that the Establishment Clause incorporated the principles of separation of church and state. Not only did the Establishment Clause prohibit an established religion, but it went farther and sought to isolate the affairs of government from the affairs of religion, or in Jefferson's famous language, to "erect a wall of separation between church and state." Even the dissenters in *Everson* agreed, differing only as to where the wall should be built. In the words of Mr. Justice Rutledge, "It [the First Amendment] was to create a complete and permanent separation of the spheres of religious activity and civil authority . . ." *Id.* at 331-32 (Rutledge, J., dissenting).

The religion clauses of the First Amendment are largely the words of Thomas Jefferson and James Madison; they grew out of a conviction on the part of those two distinguished patriots that the union of church and state was destructive to both.

Most of the colonies had established churches, and it was the desire of many that such establishment con-

tinue after independence from Britain. Patrick Henry introduced a bill in the General Assembly of Virginia "For the Support of Teachers of the Christian Religions." Madison instantly responded with his famous "Memorial and Remonstrance Against Religious Assessments," which, as this Court has recognized, "is the foundation for the religion clauses of the First Amendment, and a guide to their interpretation." Said Madison:

> . . . [I]t is proper to take alarm at the first experiment on our liberties. . . . The freedom of America did not wait til usurped power had strengthened itself by exercise. . . . They saw all the consequences in the principle, and they avoided the consequences by denying the principle.

Id. at 64-65.

The exact language of the religion clauses underwent several changes in Congress before the Bill of Rights was submitted to the states; but the principle embodied remained that of "Memorial and Remonstrance." S.Doc. 92-82, 92nd Cong., 2nd Sess. 911-12 (1974).

This Court has in fact subsequent to *Everson,* declared that it will "not tolerate either governmentally established religion or governmental interference with religion." *Walz* v. *Tax Commission of the City of New York,* 397 U.S. 664, 669 (1970).

In *Walz,* the Court recognized the importance of chartering a judicial course "that preserved the autonomy and freedom of religious bodies while avoiding any resemblance of established religion." *Id.* at 672.

Although many perplexing questions in constitutional law have been presented by cases arising under

the Establishment Clause, this Court has fashioned a three-prong test by which to judge the constitutionality of a statute or governmental act. In order to pass constitutional muster, a statute or governmental act must: 1) reflect a clearly secular purpose; 2) have a primary effect that neither advances nor inhibits religion; and 3) avoid excessive governmental entanglement with religion. *Lemon* v. *Kurtzman*, 403 U.S. 602, 612-614 (1971); *Committee for Public Education* v. *Nyquist*, 413 U.S. 756 (1973).

The Court has pinpointed several activities which the Establishment Clause is directed against. They include the placement of the government's prestige behind a particular religion, *Engel* v. *Vitale*, 370 U.S. 421, 429-30 (1962), and the employment of the political machinery of the government to gain a preferred status for a religion or a belief. *Abington Township School Dist.* v. *Schempp, supra* at 222.

When the Court finds that a challenged activity impairs one of the objectives of the Establishment Clause, that activity must be struck down.

The First Amendment command does not simply prohibit the government from establishing a national church or religion. Rather, the First Amendment states that there shall be "no law *respecting* the establishment of religion." (Emphasis supplied.) A law respecting the proscribed result is not always easily identifiable as one violative of the Establishment Clause. A given act might not establish a state religion or favor religion generally but nevertheless be one "respecting" that end in the sense of being a step that could lead to such an establishment and hence

offend the First Amendment. *Lemon* v. *Kurtzman, supra* at 612.

Professor Laurence Tribe has stated it this way:

> Even if it cannot be shown that a governmental policy was aimed at a religious aspect of behavior, if the essential effect of the government's action is to influence—either positively or negatively—the pursuit of a religious tradition or the expression of a religious belief, it should be struck down as violative of the Free Exercise Clause if the effect is negative, and of the Establishment Clause if positive.

L. Tribe, *American Constitutional Law* 855 (1978).

This Court has held that its "cases simply do not support the notion that a law found to have a 'primary effect' to promote some legitimate end under the state's policy power is immune from further examination to ascertain whether it also has a direct and immediate effect of advancing religion." *Nyquist, supra* at 783-84. With reference to this judicial declaration, Professor Tribe states:

> The constitutional requirement of "primary secular effect" has thus become a misnomer; while retaining the earlier label, the Court has transformed it into a requirement that any non-secular effect be remote, indirect and incidental. This incidental standard plainly compels a more searching inquiry, and comes closer to the absolutist aid approach to the Establishment Clause than the primary effect test did.

Tribe, *supra* at 840.

The third prong of the Establishment test requires a finding that there is no excessive governmental en-

tanglement involved. The "entanglement" test was first postulated by this Court in *Lemon* v. *Kurtzman, supra.* There, this Court called for the close scrutiny of the degree of entanglement when there is state involvement with religious institutions. Specifically, it said that "the objection is to prevent, as far as possible, the intrusion of either into the precincts of the other." *Id.* at 604.

In *Walz* the Court emphasized the necessity of clearly examining governmental actions to see if the government thereby becomes excessively involved in the affairs of the church. *Walz, supra* at 672.

In *Lemon* the Court said it is enough to strike down government regulations where "a reasonable likelihood or possibility of entanglement exists." *Lemon, supra* at 602. In a subsequent case, this Court spoke of the "substantial risk" of potential church-state conflict. *Levitt* v. *Committee for Public Education and Religious Liberty,* 413 U.S. 472, 479-81 (1973).

In spite of repeated judicial assertions revering the Free Exercise Clause of the First Amendment, those individuals who laid claim to these rights in our courts rarely prevailed against the government prior to this Court's 1963 decision in *Sherbert* v. *Verner,* 374 U.S. 398 (1963), where the Court first articulated its test for Free Exercise rights under the First Amendment.

In *Sherbert,* this Court made a major shift in balancing the interests of the state against the Free Exercise rights of an individual. This Court, although not specifically overruling an earlier decision in *Braunfeld* v. *Brown,* 366 U.S. 599, 607 (1961), expanded the scope of the previously-dormant Free Exercise Clause, as well as the extent of the required inquiry into the

state's interest set up in opposition to the Free Exercise claim. *Sherbert* has given the Free Exercise Clause its present vitality. It established a new balancing test to resolve the competing interests existent when First Amendment rights are at stake.

In *Sherbert,* this Court, in considering the competing interests, announced the test for a Free Exercise case: (1) Is there a burden imposed on the Free Exercise of religion? *Id.* at 403. (2) If there is such a burden is the infringement justified by compelling governmental interest? *Id.* at 406. (3) Even if a compelling governmental interest has been shown to exist, is there any less intrusive, alternative means available to meet the state's objective? *Id.* at 407.

This Court made clear that not every interest will overbalance a Free Exercise claim. The interest must be shown to involve a grave and paramount state concern. Id. at 405. " 'Only the gravest abuses . . . give occasion for permissible limitation.' " *Id.* at 406.

In *Sherbert* this Court made clear that its threshold inquiry was substantially different from that of *Braunfeld.* There was to be a much stronger showing by the state than that required under the "secular purpose test" of *Braunfeld.* The *Braunfeld* Court speaks of exercising the "most critical scrutiny" when an individual asks the Court to strike down governmental action that only has an indirect impact on his Free Exercise claim. *Braunfeld* v. *Brown, supra* at 606. In *Sherbert* the Court demands a searching examination of the government's claimed compelling state interest and the impediment to those objectives that flow from an outright exemption for the individual.

Sherbert makes clear that at times the government is required under the Free Exercise Clause of the First Amendment to take affirmative steps to remove barriers to the Free Exercise of religion by making special provisions for religious interests in order to relieve them from both direct and indirect burdens placed on the Free Exercise of religion.

To understand the legal reasoning behind this Court's holding in *Sherbert* and its progeny, it seems necessary to recognize the importance of the preferred position of the First Amendment. Most First Amendment rights are not absolute; but this Court has nevertheless accorded to all of them on one occasion or another a preferred position. When a preferred position is assigned to a constitutional right, two results flow. The presumption of constitutionality which generally exists is not sufficient to validate a statute which invades that right. Wormuth, *The Impact of Economic Legislation Upon the Supreme Court,* 6 J.Pub. L. 296 (1957). And in fact it has been held by a court of appeals that "governmental action affecting fundamental rights does not enjoy a presumption of constitutionality; rather, the burden is upon the government to show compelling governmental interest justifying intrusion." *Tygrette* v. *Washington,* 543 F.2d 840, 849 (D.C. Cir. 1974). This Court has observed that where fundamental rights and liberties are asserted under the equal protection clause, classifications which might invade or restrain them must be closely scrutinized and carefully confined. *Harper* v. *Virginia State Board of Elections,* 383 U.S. 663, 670 (1966). This Court also has long held that if the basis of classification is inherently suspect, the statute must be subjected to exacting

scrutiny, regardless of the subject matter of the legislation. *Kramer* v. *Union Free School District,* 395 U.S. 621, 628 n.9 (1969).

In the instant case fundamental rights and liberties are asserted by the Plaintiffs. Clearly the classifications made by the State of Minnesota with reference to the exemption provision "might invade or restrain" the fundamental rights and liberties asserted by the Plaintiffs. Therefore, the legislative determination which was made may not be approved simply by reference to a general presumption of constitutionality.

A second result of the preferred position status requires the use of the doctrine of reasonable alternative. That is a requirement that a statute be "narrowly drawn to prevent the supposed evil." *Cantwell* v. *Connecticut,* 310 U.S. 296, 307 (1940); Wormuth & Murkin, *The Doctrine of the Reasonable Alternative,* 9 Utah L.R. 254, 302 (1964).

The doctrine of reasonable alternative requires the government to employ the least restrictive course that will accomplish the desired objective. This doctrine was implanted in the law of intellectual freedom as early as 1923. *Meyer* v. *Nebraska,* 262 U.S. 390 (1923). Twelve years before the *Sherbert* decision, this Court, in *Shelton* v. *Tucker,* 364 U.S. 398 (1960), struck down a state statute requiring teachers to file affidavits listing the organization to which they belonged. In *Shelton* the Court recognized that the First Amendment needs breathing space and that a statute which burdens the exercise of First Amendment rights must be narrowly drawn. *Id.* at 488.

The Court in *Shelton* held that even though the governmental purpose may have been legitimate and

substantial, that purpose could not be obtained by a means that infringed upon present liberties if a less intrusive method of shifting means were available. The Court held that "[t]he breadth of legitimate abridgement must be viewed in the light of the least drastic means for achieving the same basic purpose." *Ibid.*

Of considerable importance is the fact that in the area of First Amendment rights, when this Court has applied the doctrine of reasonable alternative, the alternative means of satisfying legislative goal has not been required to be as satisfactory as the broader law. Wormuth & Murkin, *The Doctrine of the Reasonable Alternative, supra* at 287.

The commands of both the Establishment and Free Exercise Clauses of the First Amendment raise the question of how each relates to the other and to what extent must the state accommodate religion, as well as to what extent government may go to accommodate religious needs. There has and continues to be much legal debate over the question. However, this Court in *Zorach* v. *Clauson* suggested that "separation of church and state" is not an independent principle, that the principle is that of religious liberty. The religion clauses of the First Amendment must be read together, and religious liberty is to be protected by the First Amendment against governmental action either through establishing religion or prohibiting its free exercise. *Zorach* v. *Clauson,* 343 U.S. 306 (1952).

In *Zorach* this Court recognized the principle of religious accommodation and noted that the people of the United States are in fact a religious people. This accommodation is permitted in order to maintain a

neutrality between religious believers and non-believers. The Court explained:

> The government must be neutral when it comes to competition between religious sects, . . . but there is no constitutional requirement which makes it necessary for government to be hostile to religion and to throw its weight against efforts to widen the effective scope of religious influence. . . .

Id. at 314.

In *Walz* v. *Tax Commission of the City of New York, supra* at 669-70, this Court stated:

> Each value judgment under the religion clauses must . . . turn on whether particular acts in question are intended to establish or interfere with religious beliefs and practices or have the effect of doing so. Adherence to the policy of neutrality that derives from an accommodation of the establishment and free exercise clause has prevented the kind of involvement that would tip the balance toward government control of churches or government restraint on religious practice.

The Establishment Clause as interpreted today is designed both to implement the free exercise of religion and to prevent civil strife resulting when government and religion interfere with one another. To accomplish these inter-related purposes, government must be prevented from officially endorsing or putting its weight behind any religious belief. Correspondingly, any government action, which has the effect of interfering with a religious group, is contrary to the principle of neutrality. It might be argued by some separationists that no exemption from the Minnesota Charitable Solicitation Act should be granted to churches because of a claimed violation of the Establishment Clause. The

Establishment Clause, however, should not be so indiscriminately applied as to impair the free exercise of religion. The Establishment and Free Exercise Clauses are largely inter-related, both in the type of situations in which they arise and in the evils they are designed to prevent. Consequently, they should be construed together so as not to work at cross purposes.

This Court has, in several cases, ruled that the religion clauses of the Constitution mandates an accommodation for religious needs. In *Sherbert* v. *Verner, supra,* this Court required an exemption from the disqualification provision of a state's unemployment statute so as to accommodate Mrs. Sherbert's sabbatarian belief. In *Wisconsin* v. *Yoder,* 406 U.S. 205 (1972), this Court required that Amish parents be accommodated as against the state's compulsory school-attendance statute, and in *Thomas* v. *Review Board,* 101 S.Ct. 1425 (1981), this Court held that the personal religious scruples of a Jehovah's Witness against manufacturing armaments constitutionally required an exemption from the strict state unemployment statute.

The Court in *Sherbert* made clear that although judicial action declaring a practice a violation of the Free Exercise Clause might be construed as a carving out of an exception on the basis of religion, such an exception may be compelled by considerations of Free Exercise cannot be regarded as an establishment of religion.

The concept of government accommodation of religion does not begin and end only with the question of whether the religion clauses of the First Amendment requires an exemption from a governmentally-required duty.

It has been unequivocally declared that "[t]he limits of permissible state accommodation to religion are by

no means coextensive with the non-interference mandated by the Free Exercise Clause." *Walz, supra* at 673. The legislature may go further than is constitutionally required under the Free Exercise Clause in an attempt to accommodate where government action has been involved in limiting the religious freedom of an individual or a religious group.

In the ordinary Free Exercise case, the negative effect of government presence is so great that the underlying statute or its administration is declared unconstitutional. The "legislative Free Exercise" rationale, on the other hand, would by virtue of the Free Exercise Clause vest the legislature with discretion to remove negative effects. The legislative requirement of reasonable accommodation for religious convictions is a proper application of legislative Free Exercise, which even if not mandated by constitutional requirement, is appropriate for legislative action.

Here, it is clear that the Minnesota legislature quite properly made an exemption for churches in its statutory scheme. In fact, it might even be properly argued that such an exemption was constitutionally mandated. The error committed by the Minnesota legislature, however, was the failure to observe the principle of neutrality when granting the exemption. Failure to observe the necessary constitutionally mandated neutrality has resulted in two impermissible constitutional effects. They are (1) adverse impact on those religious groups that have small memberships and rely for their financial support on the general public and (2) favored treatment for more established groups which are able to support their religious mission from contributions primarily from their own members, although under the statute the exemption still would be left intact for the latter group even if 49% of the funds are received from

the general public. Clearly, the legislature chose a classification which is purely arbitrary in character. No one has suggested, nor could it be that the possibility of fraud is greater when a church receives 51% of its financial support from outside of its own body than if it receives 51% from its own congregation. Since this arbitrary classification is violative of the neutrality principles, and must be struck down, to countenance this type of arbitrary classification to determine which churches will be subject to onerous governmental regulation can, and in the course of natural events, will most probably lead to all types of mischief violative of the principles set forth in the religion clauses of the Constitution.

If the Minnesota exemption statute is permitted to stand in its present form by sanction of this Court, legislatures throughout the country will have an appealing vehicle to favor those religious groups that may have influence upon the legislative will and at the same time to permit the destructively coercive powers of government to be brought to bear on disfavored religious bodies. Certainly, this is one of the evils which the religion clauses of the First Amendment was designed to prevent. This Court has rather consistently steered a course in all of its decisional law on the religion clauses to protect the principle of neutrality and make certain that all agencies of both state and federal governments were kept within these parameters.

II.

PLAINTIFFS HAVE STANDING TO CHALLENGE THE MINNESOTA STATUTORY PROVISION HERE AT ISSUE.

This Court has stated in order for litigants to satisfy the Article III constitutional requirements of making

out a case or controversy, "the plaintiff must show that he personally suffered some actual or threatened injury as a result of the putatively illegal conduct of the defendant." *Gladstone, Realtors* v. *Village of Bellwood,* 441 U.S. 91 (1979).

In *United States Parole Commission* v. *Geraghty,* 445 U.S. 388 (1980), this Court noted that the case or controversy limitation serves two complementary purposes: (1) "It limits the business of the federal courts to 'questions presented in an adversary context and in a forum historically viewed as capable of resolution through the judicial process' " and (2) "[I]t defines the 'role assigned to the judiciary in a tripartite allocation of power to assure that the federal courts will not intrude into areas committed to other branches of government.' "

In *United States Parole Commission* v. *Geraghty, supra,* 100 S.Ct. at 1212-13, n.11, this Court noted that the prior cases decided by the Court were somewhat confusing but pointed out that the strict formalistic view of Article III jurisprudence, while the starting point of all inquiry, is riddled with exceptions and in creating each of these exceptions, the Court looks at the practicalities and prudential considerations. This Court characterized the resulting doctrine as "flexible."

In *Association of Data Processing Services Organizations* v. *Camp,* 397 U.S. 150, 164 (1970), this Court acknowledged that "a person . . . may have a spiritual stake in First Amendment values sufficient to give standing to raise issues concerning the Establishment Clause and the Free Exercise Clause."

In *Engel* v. *Vitale, supra* at 430-32, this Court recognized that the Establishment Clause, unlike the Free

Exercise Clause, does not depend upon any showing of direct governmental compulsion and is violated by the enactment of laws which established an official religion whether or not these laws operate directly to coerce nonobserving individuals. One of the purposes of the Establishment Clause, according to the Court in *Engel*, rested upon an awareness of the historical fact that governmental established religions and religious persecutions go hand in hand. As previously noted, the Establishment Clause does not require that a church be established as the official state church before the Establishment Clause is implicated. What is condemned is any state act respecting or tending to establish any religion. What is to be avoided is a deviation from the policy of neutrality.

Plaintiff have the right to expect, and in fact demand, that government, either federal or state, observe the principles of neutrality in all of their official actions. Plaintiffs suffer a concrete injury to a fundamental right, a right protected by the first guarantee of the Bill of Rights when this principle of neutrality is not rigidly adhered to by the state. The Establishment Clause of the First Amendment was obviously adopted to prevent the majority from acting in a way that would place any religion or religion generally in either a more favored or less favored position than a neutral course would dictate.

Establishment Clause cases reach to the very core of our basic constitutional protection. It is the special role of the judiciary to protect such a fundamental right and to insure that the state has not veered off course in the normal political processes.

The state apparently does not contend that the Plaintiffs in this action do not have standing to commence

the suit. Rather it claims that the court below erred in applying the "over breadth doctrine" to an Establishment Clause challenge when there has not been a finding that the Plaintiffs represent a religious organization. It is suggested, however, that the state misses the point. Once the state has taken an action which has the effect of favoring one religious group over another or favoring religion generally, a citizen should have a right to complain of that state action by right of the fact that he is a citizen living under a principle of constitutional law that guarantees a government neutral on matters of religion. Once this neutrality has been violated and injury has occurred for which the Plaintiff may seek relief, it is not a matter of constitutional consequences that the Plaintiffs be a member of any church in order to object to government's favoring of any religious organization. Once government by its legislation has deviated from its neutral course, a citizen, whether religionist or not, offended by this action has a right to seek redress in the courts.

In addition, this Court has recognized that the doctrine of "over breadth" should accord standing by reason of the "chilling effect" that a particular law might have upon the exercise of First Amendment rights. In this case Plaintiffs clearly are subject to the penalizing powers of the state of sufficient consequence as to be affected by the chilling winds of the statute here in question. *Moose Lodge No. 107* v. *Irvis,* 407 U.S. 163, 167-68 (1972); *Law Students Civil Rights Research Council* v. *Wadmond,* 401 U.S. 154 (1971).

In *Flast* v. *Cohen,* 392 U.S. 83 (1968), the Court pointed out that it is appropriate to examine the substantive issues involved to "determine whether there is a logical nexus between the status asserted and

the claim sought to be adjudicated." *Id.* at 102. Standing can be discussed meaningfully only in the context of the precise contention of the parties. Plaintiffs clearly claim that the Minnesota legislation has not only placed their church is a disfavored position and interferred with their personal Free Exercise rights, but in addition has placed other religious groups in a more favored position. Both the District and Appeals Courts below, after examining the statute, agreed that the statutory-exemption provision did in fact place certain churches in a more favored position. Although it has been claimed that standing is a threshold question, here we are not dealing with the Plaintiff's right to initiate this suit but the right of the Court to rule on the constitutionality of the exemption provision before determining if Plaintiff's church is a religious organization. It would seem that standing in this context is clearly not a threshold issue. One commentator has even suggested that standing should never be treated as a threshold issue but rather should be viewed as a component of Plaintiffs' claim for relief since its resolution necessarily involved substantive issues, such as injury, duty, and causation. See L. Albert, *Standing to Challenge Administrative Action: An Inadequate Surrogate for Claims for Relief,* 83 Yale L.J. 425, 426-27 (1974).

It would seem counterproductive to put the judicial process in reverse on the grounds of standing if in fact the exemption provision of the Minnesota statute does violate the Establishment Clause. Such artificial use of the standing argument does not comport with the prudential purposes for which this Court has previously applied standing as a bar to judicial determination.

CONCLUSION

This Court should affirm the judgment of the Court of Appeals.

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In the

Supreme Court of the United States

OCTOBER TERM, 1980

JOHN R. LARSON, Commissioner of Securities, Minnesota Department of Commerce; WARREN SPANNAUS, Minnesota Attorney General; Individually and in their official capacities,

Appellants,

vs.

PAMELA VALENTE, LARRY BARBER, LARRY HAFT, KIMBERLY KORMAN, and HOLY SPIRIT ASSOCIATION FOR THE UNIFICATION OF WORLD CHRISTIANITY,

Appellees.

On Appeal from the
United States Court of Appeals for the Eighth Circuit

BRIEF AMICUS CURIAE OF THE CENTER FOR LAW AND RELIGIOUS FREEDOM OF THE CHRISTIAN LEGAL SOCIETY IN SUPPORT OF APPELLEES

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MISCELLANEOUS:

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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1980

No. 80-1666

JOHN R. LARSON, Commissioner of Securities, Minnesota Department of Commerce; WARREN SPANNAUS, Minnesota Attorney General; Individually and in their official capacities,

Appellants,

vs.

PAMELA VALENTE, LARRY BARBER, LARRY HAFT, KIMBERLY KORMAN, and HOLY SPIRIT ASSOCIATION FOR THE UNIFICATION OF WORLD CHRISTIANITY,

Appellees.

On Appeal from the
United States Court of Appeals for the Eighth Circuit

BRIEF OF THE CENTER FOR LAW RELIGIOUS FREEDOM OF THE CHRISTIAN LEGAL SOCIETY AS AMICUS CURIAE IN SUPPORT OF APPELLEES[1]

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[1] The Center for Law and Religious Freedom of the Christian Legal Society files the within brief in support of appellee's legal arguments and the lower court decisions favorable to them. By the filing of this brief the Center for Law and Religious Freedom is not and should not be construed as endorsing any of the theological or philosophical beliefs and doctrines of the appellees.

INTEREST OF AMICUS CURIAE[2]

The Christian Legal Society is a non-profit Illinois corporation founded in 1961 as a professional association of Christian judges, attorneys and law students. Today it includes over 3,500 members throughout the United States. The Center for Law and Religious Freedom is a division of the Christian Legal Society founded in 1975 to protect, promote, assure and enhance the freedom of Christians in the exercise of their faith which is guaranteed by the United States Constitution.

In accordance with its objectives, the Center for Law and Religious Freedom of the Christian Legal Society through its Advisory Board evalutes and defines constitutional issues, collects research data relating to those issues, and determines whether a particular issue is worthy of support. Its national membership and professional resources thus enable the Center for Law and Religious Freedom of the Christian Legal Society to focus public attention on unconstitutional incursions upon religious freedom that would otherwise go unrecognized. Because of its acute awareness concerning unconstitutional violations of the freedom of religion, it has increasingly become one of the nation's most effective and responsible commentators in this important field.

The Center has participated as amicus curiae in numerous legal and administrative proceedings. In pursuit of its goals, the Center also has held numerous regional

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[2] The letters of consent of the parties to the filing of this brief are submitted herewith to the Clerk pursuant to Rule 36.2,

and national conferences providing continuing legal education by experts in fields which impact upon religious freedom.

This brief is filed to provide the Court with the views of amicus on aspects of the Equal Protection and Religion Clauses which amicus believes have not been adequately addressed to date.

STATEMENT OF THE CASE

Appellees (the Holy Spirit Association for the Unification of World Christianity and four members of the said church) instituted this action for declaratory judgment and injunctive relief respecting the Minnesota Charitable Solicitations Acts (Minnesota Statutes, Sections 309.50 - 309.61 (1980)), relating to the solicitation of funds from Minnesota citizens, as unconstitutional on its face and as applied. The United States District Court determined that the statute was unconstitutional due to unequal treatment under the Establishment Clause and held that the exemption granted by statute to some religious organizations under the said Act should be extended to all religious organizations. The United States Court of Appeals for the Eighth Circuit affirmed the basic holding of the District Court, that the exemption contained in the statute violated the Establishment Clause.

ARGUMENT

I.

THE CLASSIFICATION OF RELIGIOUS GROUPS IN THE MINNESOTA CHARITABLE SOLICITATIONS ACT CONSTITUTES INVIDIOUS DISCRIMINATION VIOLATIVE OF THE EQUAL PROTECTION CLAUSE OF THE FOURTEENTH AMENDMENT AND THE ESTABLISHMENT CLAUSE OF THE FIRST AMENDMENT REGARDLESS OF THE UNDERLYING INTENT OF THE MINNESOTA LEGISLATURE OR THE EFFECT OF THE SAID ACT.

The Minnesota Charitable Solicitations Act (Sections 309.50-309.61) at Section 309.515(1)(b) exempts religious organizations from parts of the Act, which have received "more than half of the contributions it received in the accounting year last ended (1) from persons who are members of the organization; or (2) from a parent organization or affiliated organization; or (3) from a combination of the sources listed in clauses (1) and (2)." The statute on its face divides religious organizations into two different classifications and thereby places different responsibilities, burdens and rights on the two classes. If the said exemption in the legislation was not intended to divide religious organizations into two classifications, why was it included?

A. The Equal Protection Clause Of The Fourteenth Amendment Is Applicable To All State Law.

The Fourteenth Amendment of the United States Constitution mandated that states grant the equal protection of the laws to all citizens. This Court has made the rights and privileges of the First Amendment applicable to the states through the Fourteenth Amendment. The same

prohibitions that prevent Congress and the federal government from establishing a religion or prohibiting the free exercise thereof are fully applicable to the states. *Everson* v. *Board of Education,* 303 U.S. 1 (1947), and *Cantwell* v. *Connecticut,* 310 U.S. 296 (1940), respectively.

The Equal Protection Clause of the Fourteenth Amendment prohibits state action of every kind that operates to deny any citizen the equal protection of the laws. *Golden* v. *Biscayne Bay Yacht Club,* 521 F2d 344 (1975).

This Court has firmly established the principle that the Equal Protection Clause does not make every minor difference in the application of laws to different groups a violation of our Constitution. But it has also held many times that "invidious" distinctions cannot be enacted without a violation of the Equal Protection Clause. *Brown* v. *Board of Education,* 347 U.S. 483 (1954); *Loving* v. *Virginia,* 388 U.S. 1 (1967).

In determining whether or not a state law violates the Equal Protection Clause, the Court must consider the facts and circumstances behind the law, the interests which the State claims to be protecting, and the interests of those who are disadvantaged by the classification. *Skinner* v. *Oklahoma,* 316 U.S. 535 (1942).

B. The Minnesota Charitable Solicitations Act Intrudes Upon A Fundamental Right Thus Making It Appropriate To Apply Strict Equal Protection Standards.

The Court has repeatedly held that the Equal Protection Clause of the Fourteenth Amendment, as much as the Due Process Clause, protects individuals against arbitrary state actions and forbids any classification which makes irrational distinctions between similarly situated persons or groups. *Eisenstadt* v. *Baird,* 405 U.S.

438, 446-47 (1972); *Reed* v. *Reed*, 404 U.S. 71, 75-76 (1971); *Kotch* v. *Board of River Port Pilot Commissioners*, 330 U.S. 552, 556 (1947). The Court has established two distinct standards for determining whether a statute or rule violates the Equal Protection Clause.[3] In cases involving routine social or economic regulations, a classification is deemed valid unless it is purely arbitrary or "wholly irrelevant to the achievement of the State's objectives." *McGowan* v. *Maryland*, 366 U.S. 420, 425 (1961); *United States Department of Agriculture* v. *Moreno*, 413 U.S. 528, 533 (1973). On the other hand, when the classification at issue is inherently "suspect" or when it affects "fundamental rights", the Court has applied a much stricter standard. In such cases, the Court has held that the classification, to be valid, must "promote a compelling governmental interest," *Shapiro* v. *Thompson*, 394 U.S. 618, 634 (1969) (emphasis in original), or serve some "overriding" purpose. *McLaughlin* v. *Florida*, 379 U.S. 184, 192 (1964). See also *Skinner* v. *Oklahoma*, *supra* at 541 ("strict scrutiny" of sterilization law required); *Levy* v. *Louisiana*, 391 U.S. 68, 71 (1968) (Court is "extremely sensitive" to classifications which affect "basic civil rights"); *Graham* v. *Richardson*, 403 U.S. 365, 372 (1971) ("heightened judicial solicitude" is required for certain classes of persons); Note, "Developments in the Law — Equal Protection", 82 Harv. L. Rev. 1065, 1076-1132 (1969).

The Court has also held that "this strong policy (i.e. eliminating racial discrimination emanating from official

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[3] The Equal Protection Clause, of course, applies to classifications created by governmental rule or policy as well as those created by statute. See e.g. *Burton* v. *Wilmington Parking Authority*, 365 U.S. 715 (1961).

sources in the States) renders racial classifications "constitutionally suspect," *Bolling* v. *Sharpe*, 347 U.S. 497, 499 (1954); subject to the "most rigid scrutiny", *Korematsu* v. *United States*, 323 U.S. 214, 216 (1944); and in "most circumstances irrelevant" to any constitutionally acceptable legislative purpose, *Hirabayoshi* v. *United States*, 320 U.S. 81, 100 (1943). In *McLaughlin* v. *Florida*, *supra* at 196, this Court said, "There is involved here an exercise of the state police power which trenches upon the constitutionally protected freedom from invidious official discrimination based on race. Such a law, even though enacted pursuant to a valid state interest, bears a heavy burden of justification, as we have said, and will be upheld only if it is necessary, and not merely rationally related, to the accomplishment of a permissible state policy."

Unless a provision draws a classification which implicates fundamental personal rights or is based upon an inherently suspect distinction such as race, *religion*, or alienage, the classification will be upheld unless it can be shown that the classification is not rationally related to a legitimate state interest. (Emphasis added). *McGowan* v. *State of Maryland*, *supra* at 425-426. Certain classifications, however, in themselves supply a reason to infer antipathy. Race is the paradigm. A racial classification, regardless of purported motivation, is presumptively invalid and can be upheld only upon an extraordinary justification. *Brown* v. *Board of Education*, *supra*.

It is well settled that the religious freedom rights contained in the First Amendment are fundamental rights entitled to the utmost protection equal to any other fundamental right including freedom from racial discrimination. Amicus curiae submits that the stricter standard of equal protection analysis is applicable in

this case. The classification at issue here affects a "fundamental right," namely the religious freedom rights of the First Amendment. It is appropriate to apply the type of strict equal protection scrutiny that was set out by the Court in *Reed* v. *Reed, supra* and *Craig* v. *Boren*, 429 U.S. 190, 197 (1976) (the classification "must serve important governmental objectives and must be substantially related to the achievement of those objectives").

In *McDaniel* v. *Paty*, 435 U.S. 618 (1978), the subject of religious classification was addressed by Mr. Justice Brennan in a concurring opinion joined by Mr. Justice Marshall. He stated:

> Whether or not the provision discriminates among religions. . . it establishes a religious classification — involvement in protected religious activity . . . which I believe is absolutely prohibited.

Id. at 631-32. Mr. Justice Brennan went on to note that the Tennessee state constitutional provision in question in *McDaniels*, which barred "[m]inister[s] of the Gospel or priest[s] of any denomination whatever" from serving in public office, "imposes a unique disability upon those who exhibit a defined level of intensity of involvement in protected religious activity." *Id.* at 632. In discussing this case, Professor Tribe recently observed that "[b]ecause government may not constitutionally use religion as a basis for such burdensome classification, the law could not stand." L. Tribe, *American Constitutional Law*, 1979 Supplement, at pp. 78-79. Professor Tribe also pointed out that the plurality opinion of Chief Justice Burger required the State, in order to justify its attempted infringement on the appellant's religious activities, to prove "interests of the highest order." *Ibid.* at 79. Compare, *Wisconsin* v. *Yoder*, 406 U.S. 205, 215 (1972) and *Sherbert* v. *Verner*, 374 U.S. 398, 406 (1963).

In *Golden* v. *Biscayne Bay Yacht Club, supra,* the U.S. Court of Appeals said that, "Religious discrimination carries the same stigma of inferiority and badge of opprobrium that is characteristic of racial discrimination; thus, the well developed standards utilized in racial discrimination settings were applicable to both black and Jewish plaintiffs who had been applicants for membership in a private yacht club and had brought civil rights action wherein they alleged discriminatory admission policies of the club." The Court also stated the resulting "infringement upon religious freedom arising out of religious discrimination . . . was invidious religious discrimination violative of Equal Protection Clause of Fourteenth Amendment, as well as the Establishment Clause and Free Exercise Clause of First Amendment."

If a State had a law requiring a private person to refuse service because of race, it is clear beyond dispute that the law would violate the Fourteenth Amendment and could be declared invalid and enjoined from enforcement. *Adickes* v. *Kress & Co.,* 398 U.S. 144, 170 (1970). The same reasoning should be dispositive if a state enacted a law requiring religious discrimination either on its face or in its application since our religious freedom rights are in fact fundamental to our concept of liberty.

In the opinion of the United States Court of Appeals for the Eighth Circuit, *Valente* v. *Larson,* 637 F2d 562, 566, the Court took judicial notice in the absence of argument to the contrary from the state officials that real discrimination existed.[4] Amicus curiae contends that de

[4] The Court of Appeals also held that "the resulting discrimination is constitutionally invidious." *Valente, supra* at 568.

jure discrimination did in fact exist due to the fact that the Minnesota Charitable Solicitations Act discriminated on its face, against certain religious groups by exempting some but not all religious groups from portions of the reporting requirements.

The said exemption for religious organizations constitutes real discrimination by classification as well as opens the door for further discrimination by state regulatory bodies charged with implementing the discriminatory statute. It makes no difference whether appellees have demonstrated discrimination in the application of the statute by evidence or by intent to discriminate on the part of the legislature. Intent is present in that the statute contains an inherently suspect classification on its face.

As a result of this de jure discrimination, the statute is to be presumed constitutionally impermissible as a violation of the Equal Protection Clause of the Fourteenth Amendment unless the State is able to demonstrate a valid "compelling state interest."

C. Compelling State Interest Is Required In Order To Uphold A Statute Which Is Violative Of The Equal Protection Clause When Fundamental Rights Are Involved.

If an equal protection challenge involves a fundamental right or a suspect classification, state activity will be subject to strict judicial scrutiny and will prevail only if the state shows that such action is justified by a "compelling state interest". *Benner* v. *Oswald,* 592 F2d 174, (1979).

In determining whether the State has power to place such unequal burdens on minority groups where rights of this kind are at stake, the decisions of this Court have consistently held that "only a compelling state interest

in the regulation of a subject within the State's constitutional power to regulate can justify limiting First Amendment freedoms." *NAACP* v. *Button*, 371 U.S. 415, 438 (1962); *Williams* v. *Rhodes*, 393 U.S. 23, 31 (1969). The state interest needed when First Amendment freedoms are regulated must be (1) compelling, and (2) within the State's constitutional power to regulate.

The compelling state interest needed to nullify a claim of religious discrimination under the Equal Protection Clause of the Fourteenth Amendment or a violation of religious freedom under the First Amendment needs more than a mere rational relationship to some "colorable state interest." Only "the gravest abuses, endangering paramount interest" can permit limitation of free exercise. *Sherbert* v. *Verner*, supra, at 406 and *Wisconsin* v. *Yoder*, supra, at 215.

> "The essence of all that has been said and written on the subject is that only those interests of the highest order and those not otherwise served can overbalance legitimate claims to the free exercise of religions." *Wisconsin* v. *Yoder*, supra, at 215.

A court should not accept "sweeping" claims but instead should "searchingly examine the interests that the state seeks to promote." *Id.* at 221. In *Yoder* the state's interest in its system of compulsory education and its interest in acting as parens patriae were insufficient. In *Sherbert* v. *Verner*, the integrity of a state unemployment compensation plan was not enough. In *Ohio* v. *Whisner*, 351 N.E.2d 750 (Ohio 1976), the state's interest in insuring certain minimum curriculum and faculty standards in private schools was inadequate. And from *NLRB* v. *Catholic Bishop of Chicago*, 440 U.S. 490 (1979), it appears that the national labor policy of the federal gov-

ernment would not be weighty enough to permit interference with the operation of religious high schools. On the other extreme, the conscientious objector cases demonstrate that the nation's unassailable interest in self-defense and the efficient conduct of war are substantial enough to outweigh the religious liberty interest found in those cases. *Gillette* v. *United States,* 401 U.S. 437 (1971).

There has been no showing on the part of the appellants that the State of Minnesota had any "compelling state interest" which would justify such an invidiously discriminatory classification of religious groups as contained in the Minnesota Charitable Solicitations Act. The lower court, *Valente,* supra, at 567, stated that "No such sound and justifiable purpose can be found in the system of classifying religious organizations. On the contrary, as previously suggested, the exemption of organizations which conduct substantial public solicitations, if such solicitations account for less than half of the organization's income, appears to be designed to shield favored sects, while continuing to burden other sects. The classification has no ascertainable secular legislative purpose. . ."

In the Statement of the Case in Appellant's brief, p. 4, the purposes of the statute and the specific exemption are put forth. The purposes are "to provide information to Minnesota citizens for the purpose of making them more informed charitable donors and to protect them from fraud and misrepresentation." In light of the "compelling state interest" cases of this Court, mentioned supra, the interest of Minnesota in having "more informed charitable donors" or protecting them from "fraud and misrepresentation" (which is covered by existing civil and criminal statutes) can hardly be said to rise to the level of a compelling state interest.

The fact that there is or might be some fraud or misrepresentation in the solicitation and use of funds does not constitute justification of a statute which invidiously discriminates against religious organizations which are perceived, as evidenced by the statutory classification, to be involved in fraud or misrepresentation. This lack of justification is especially true when dealing with fundamental First Amendment rights. Justice Jackson in his well regarded dissent in *U.S.* v. *Ballard,* 332 U.S. 78, at 94-95 (1944) answered this fear and actually went beyond the majority in defending religious liberty even of groups with which he didn't agree.

> "Scores of sects flourish in this country by teaching what to me are queer notions. It is plain that there is wide variety in American religious taste. The chief wrong which false prophets do to their following is not financial . . . [T]he wrong of these things, as I see it, is not in the money the victims part with, half so much as in the mental and spiritual poison they get. But that is precisely the thing the Constitution put beyond the reach of the prosecutor, *for the price of freedom of religion* or of speech or of the press is that *we must put up with,* and even pay for, *a good deal of rubbish.*" (Emphasis added).

D. Government Is Required To Be Neutral In All Respects When Dealing With First Amendment Religious Freedoms In Order To Withstand A Challenge Of Violation Of Both The Equal Protection Clause And The Establishment Clause.

This Court has long recognized that the Establishment Clause calls for government neutrality in matters of religion, and that government hostility to religion, as well as government sponsorship of religion, can violate the Establishment Clause. Government in our democracy, state and national, must be neutral in matters of religious

theory, doctrine, and practice. It may not be hostile to any religion or to the advocacy of non-religion; and it may not aid, foster, or promote one religion or religious theory against another or even against the militant opposite. The First Amendment mandates governmental neutrality between religion and religion, and between religion and nonreligion. *Everson* v. *Board of Education, supra* 18; *McCollum* v. *Board of Education,* 333 U.S. 203 (1948); *Epperson* v. *Arkansas,* 393 U.S. 97 (1968) at 103-104.

Justice Harlan, discussing the goal of proper and acceptable relationships between government and religion, stated in his concurring opinion in *Walz* v. *Tax Commission,* 397 U.S. 664 (1970):

> "Two requirements freely articulated and applied in our cases for achieving this goal are 'neutrality' and 'voluntarism.' E.g., see *Abington School Dist.* v. *Schempp,* 374 U.S. 203, 305 (1963) (Concurring opinion of Mr. Justice Goldberg); *Engel* v. *Vitale,* 370 U.S. 421 (1962). These related and mutually reinforcing concepts are short-form for saying that the Government must neither legislate to accord benefits that favor religion over non-religion, nor sponsor a particular sect, nor to encourage participation in or abnegation of religion. Mr. Justice Goldberg's concurring opinion in *Abington,* which I joined, set forth these principles: 'the fullest realization of true religious liberty requires that government neither engage in nor compel religious practices, that *it effect no favortism among sects or between religion and non-religion, and that it work deterrence of no religious belief*'." 374 U.S. at 305. (Emphasis added).

This has been the interpretation of the great First Amendment which this Court has applied in many and subtle problems which the ferment of our national life

has presented for decision within the Amendment's broad command. *Epperson* v. *Arkansas, supra* 104.

Neutrality, according to Justice Harlan's view, "requires an equal protection mode of analysis." Here, there is no equal treatment. The Act on its face discriminates between religious organizations by dividing them into two classes and bestowing different rights, benefits and burdens to the two different classes. An attack founded on disparate treatment of "religious" claims invokes what is perhaps the central purpose of the Establishment Clause — the purpose of ensuring governmental neutrality in matters of religion. See *Epperson* v. *Arkansas, supra,* at 103-104.

At any rate, it is true that "the more discriminating and complicated the basis of classification for any exemption — even a neutral one — the greater the potential for state involvement" in determining the character of persons' beliefs and affiliations, thus "entangl[ing] government in difficult classifications of what is or is not religious, or what is or is not conscientious. *Gillette* v. *United States, supra,* at 457.

This Court held in *Braunfield* v. *Brown,* 366 U.S. 599, 607 (1961), that "[i]f the purpose or effect of a law is to impede the observance of one or all religions or is to discriminate invidiously between religions, that law is constitutionally invalid even though the burden may be characterized as being only *indirect.*" (Emphasis added).

Appellants continue to rely upon *Gillette* v. *United States, supra,* claiming that a statute with a valid secular purpose defeats an Establishment Clause challenge to it. As *Gillette* clearly stated, the complaint about the selective service conscientious objector exemption was that it "work[ed] a *de facto* discrimination among religions".

The Court pointed out that "The critical weakness of petitioners' establishment claim arises from the fact that Section 6(j), on its face simply does not discriminate on the basis of religious affiliation or religious belief, apart of course from beliefs concerning war." *Gillette, supra* at 450. In sharp contrast, Minnesota Stat. Ann. Section 309.515(1)(b) *expressly* divides religious organizations into two categories based on organizational structure and style of worship, a de jure discrimination among religions, which takes this case outside the *Gillette* "rule", even if, in light of subsequent cases, such a rule could be said to exist.

II.

ONCE IT HAS BEEN DEMONSTRATED THAT AN EXEMPTION TO A STATUTE HAS BEEN FOUND TO BE UNCONSTITUTIONAL, THE COURT MUST DECIDE THE APPLICABILITY OF THE EXEMPTION AND THE STATUTE TO RELIGIOUS ORGANIZATIONS ON THE BASIS OF THE TRIPARTITE TEST USED FOR ESTABLISHMENT CLAUSE ANALYSES.

Once it has been determined that the contested exemption amounts to an unconstitutional violation of the Equal Protection Clause of the Fourteenth Amendment or violation of the Establishment Clause of the First Amendment, this Court must decide whether the exemption is to be broadened to include all religious organizations (as mentioned in *Valente, supra,* this would be in line with legislative intent) or to declare the exemption invalid leaving the statute intact under its severability provisions. If the Court decides that the exemption should be broadened, which amicus curiae suggests it should, then there is no need for any further action. However, if the exemption is stricken then the statute would be fully appli-

cable to all religious organizations. The tripartite test for Establishment Clause purposes must be used in determining whether or not the Act constitutes an establishment of religion under the First Amendment. Amicus curiae submits that the application of the Act to religious organizations does, in fact, violate the Establishment Clause.

Although the clauses of the First Amendment forbid two quite different kinds of governmental encroachment upon religious freedom, this court in *Engle* v. *Vitale, supra,* pointed out that unlike the Free Exercise Clause, the Establishment Clause does not depend upon any showing of *direct governmental compulsion and is violated by the enactment of laws which establish an official religion* whether or not those laws operate directly to coerce non-observing individuals.

This Court, having laid down the tripartite test in *Lemon* v. *Kurtzman,* 403 U.S. 602 (1971), must determine whether application of the Act, absent an exemption for religious organizations, amounts to an unconstitutional establishment of religion proscribed by the First Amendment.

For governmental action to withstand a challenge of violation of the constitutional prohibition against "an establishment of religion," the action (1) must have secular legislative purpose; (2) must have a "primary effect" that neither advances nor inhibits religion; and (3) must avoid excessive government entanglement with religion. *Lemon* v. *Kurtzman, supra* at 612.

The application of the Act to all religious organizations by disregarding the classification in the exemption (Section 309.515(1)(b)) may, amicus curiae concedes, have some secular legislative purpose in the prevention

of fraud and misrepresentation in all charitable organizations. However, the whole of the Act applied to all religious organizations in Minnesota is violative of the second and third prongs of the three-prong test.

The primary effect of the specific inclusion under the Act of all religious organizations amounts to an inhibition of religion. The reporting requirements by all churches and organizations whether large or small, would entail considerable expense and administrative time in securing an audit, completing the forms and otherwise burdening religion with additional governmental forms at the expense of individual ministries. The benefit that would be received by the State of Minnesota and her citizens is minute compared to the overwhelming burden on religion and the resulting inhibition.

However commendable as a sound business practice, such an audit does not spring full blown without considerable expense and administrative coordination. *Heritage Village and Missionary Fellowship, Inc.* v. *State of North Carolina,* 263 S.E.2d 726, 733 (N.C. 1980).

It is manifest that certain religious groups will suffer material burdens as result of the obligations imposed by the Act.

Likewise, the Act's reporting requirements create excessive entanglement between government and religion. All religious groups included in the Act must comply with the reporting requirements. The content of the report required includes intimate details of the religious organization, its activities, ministry and financial detail. (See Sec. 309.52 and 309.53). The commissioner is empowered to institute public or private investigations as well as serve subpoenas and take other evidence which "the commissioner deems relevant or material to the inquiry." (See Sec. 309.533)

CONCLUSION

The classification contained in the Minnesota Charitable Solicitations Act which distinguishes between religious groups constitutes a suspect classification and amounts to invidious discrimination in violation of the Equal Protection Clause of the Fourteenth Amendment. The Court, by disregarding the invalid classification, should sustain the lower court's extension of the privileges of the exemption to all religious organizations. To do otherwise would constitute a violation of the proscription against the establishment of religion contained in the First Amendment.

Respectfully submitted,

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Dated September 12, 1981

CERTIFICATE OF SERVICE

I, Thomas S. Brandon, Jr., certify that I have submitted forty copies of the foregoing Brief Amicus Curiae of the Center for Law and Religious Freedom of the Christian Legal Society in Support of Appellees, and mailed three copies to the Attorneys of Record, on September 16, 1981.

.....

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No. 80-1666

IN THE

Supreme Court of the United States

OCTOBER TERM, 1981

JOHN R. LARSON, ET AL., *Appellants*

v.

PAMELA VALENTE, ET AL., *Appellees*

On Appeal From The United States Court Of Appeals For The Eighth Circuit

BRIEF OF THE GENERAL CONFERENCE OF SEVENTH-DAY ADVENTISTS, OF THE NATIONAL COUNCIL OF THE CHURCHES OF CHRIST IN THE U.S.A., AND OF THE BAPTIST JOINT COMMITTEE ON PUBLIC AFFAIRS, AMICI CURIAE, IN SUPPORT OF APPELLEES

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QUESTION PRESENTED

Whether the religious exemption provision of the Minnesota Charitable Solicitations Act, which subjects some churches but not others to onerous burdens, violates the Establishment Clause of the First Amendment.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1981

No. 80-1666

JOHN R. LARSON, ET AL., *Appellants*

v.

PAMELA VALENTE, ET AL., *Appellees*

On Appeal From The United States Court Of Appeals For The Eighth Circuit

BRIEF OF THE GENERAL CONFERENCE OF SEVENTH-DAY ADVENTISTS, OF THE NATIONAL COUNCIL OF THE CHURCHES OF CHRIST IN THE U.S.A., AND OF THE BAPTIST JOINT COMMITTEE ON PUBLIC AFFAIRS, AMICI CURIAE, IN SUPPORT OF APPELLEES

To the Chief Justice of the United States and the Associate Justices of the Supreme Court of the United States:

For the reasons stated in this brief, the General Conference of Seventh-day Adventists, the National Council of Churches, and the Baptist Joint Committee on Public Affairs, Friends of this Court, respectfully submit that the judgment of the Court of Appeals should be affirmed.

INTEREST OF AMICI CURIAE

The General Conference of Seventh-day Adventists represents its more than 600,000 members in this country. The Church conducts an annual Ingathering pro-

gram, a spiritual ministry in which the goal of Church members is to distribute Adventist literature in every home, to enroll interested persons in a home Bible-study course, to discuss religious matters with and pray with interested persons, and to offer every contact an opportunity to give a freewill offering to help support the church's worldwide health, education, welfare, and evangelistic ministry. Though the Adventist churches in Minnesota are exempt under the state's Charitable Solicitation's Act because the tithes and offerings of members make up the overwhelming percentage of Church income, the Church is alarmed at government attempts on many levels to intrude into the inner workings of denominations, the unequal treatment of churches under the statute in question, and the possibility that the exemption that presently shields the Church in Minnesota might be struck down by this Court.

The National Council of the Churches of Christ in the U.S.A. (NCC) is the cooperative agency of thirty-two national religious bodies — Protestant and Eastern Orthodox — having an aggregate membership in the United States of over 40,000,000. The NCC engages in a variety of fund-raising activities in all parts of the country by means of radio, television, door-to-door, and direct-mail solicitations for a variety of religious purposes, including disaster relief, refugee settlement, redress of miscarriages of justice, and the Christian Rural Overseas Program (CROP). The NCC has been increasingly concerned about the trend on the part of state and local authorities to place legal barriers in the path of such religious ministries. As far back as 1928 its Governing Board, representing its constituent religious bodies,

adopted a resolution on regulation of charitable solicitations, which reads as follows:

> Whereas, numerous states and municipalities have undertaken to regulate charitable solicitations within their borders; and
>
> Whereas, such regulations are often overbroad and vague in their definitions and requirements; and
>
> Whereas, such regulations are designed to differentiate legitimate charities from charlatans without providing adequate exemptions for religious appeals, in which civil authorities are not equipped to distinguish faith from fraud; and
>
> Whereas charitable solicitations by churches are not only a means of raising voluntary financial contributions from interested contributors but a means of promulgating religious views and concerns; and
>
> Whereas, the increasing proliferation of requirements for registration (often involving registration fees of up to $50 per year) and onerous reporting of income, expenditures, major contributors, chief officers and other information increases the cost of undertaking such appeals and severely diminishes the remainder available for assisting the needy beneficiaries; and
>
> Whereas, such statutes often encumber the civil authorities with the responsibility for unconstitutionally determining what is a "religious" purpose and what is not;
>
> Therefore, be it resolved: that the Governing Board of the National Council of the Churches of Christ
>
> (1) considers such statutes purporting to regulate the charitable solicitations undertaken by churches[1] to be beyond the duty proper to civil authorities and restrictive of the free exercise of religion;

[1] The term "church" as used here is intended to include "churches, conventions or associations of churches."

(2) urges churches and other religious organizations to resist such statutes and to seek to have them determined to be unconstitutional;

(3) urges churches and other religious organizations to obviate the necessity for such regulations by preparing full and audited reports of their receipts and expenditures and making them available to all members and contributors, upon request, without waiting for civil intervention.

In implementation of that concern, the NCC entered Friend-of-the-Court briefs in *Village of Schaumburg* v. *Citizens for a Better Environment*, 444 U.S. 620 (1980), and *Heffron* v. *International Society for Krishna Consciousness, Inc.*, 101 S.Ct. 2559 (1981), and other recent solicitation cases. It now asks this Court to place clear limitations on a state's rights to regulate religious activity which takes the form of charitable solicitation.

The Baptist Joint Committee on Public Affairs is composed of representatives elected by eight national cooperating Baptist conventions and conferences in the United States. They are: American Baptist Churches in the U.S.A.; Baptist General Conference; National Baptist Convention of America; National Baptist Convention, U.S.A., Inc.; North American Baptist Conference; Progressive National Baptist Convention, Inc.; Seventh Day Baptist General Conference; and Southern Baptist Convention. The Committee, in part, seeks to apply the traditional Baptist concerns for religious liberty and proper church-state relations to public affairs.

Appellants and Appellees have consented to the filing of this brief.

ARGUMENT I

The Minnesota Charitable Solicitations Act, as Applied to Appellees, Violates All Three Parts of This Court's Establishment Clause Test.

The Minnesota Charitable Solicitations Act, Minn. Stat. § 309.50-.61 (1980), as applied to the Appellees, violates all three prongs of this Court's Establishment Clause test. That test was first set out in *Lemon* v. *Kurtzman*, 403 U.S. 602 (1971): "First, the statute must have a secular legislative purpose; second, its principal or primary effect must be one that neither advances nor inhibits religion . . . ; finally, the statute must not foster an excessive government entanglement with religion." (Citations omitted.)

(A) The Exemption Provision of the Charitable Solicitations Act violates the Establishment Clause of the First Amendment because the state seeks to regulate religious organizations.

The Court of Appeals and Appellants in various contexts have pointed out what may be an inadequately developed record.[2] The Court of Appeals noted that it "would be more comfortable . . . if the record reflected or judicial notice could ascertain" facts concerning specific denominations that solicit funds from the public. 637 F.2d at 566. Appellants refer to "critical findings . . .

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[2] This Court has held that "summary procedures, however salutary where issues are clear-cut and simple, present a treacherous record for deciding issues of far-flung import. . . ." *Kennedy* v. *Silas Mason Co.*, 334 U.S. 249, 256-57 (1948). Since the record in this case is indeed treacherous on such subjects as legislative history, this Court may wish to hold that its noting of probable jurisdiction in this case was improvident and that this case should be remanded to the lower federal courts for additional development of basic facts relevant to this controversy.

where there is no factual record" and "[o]ther factual findings unsupported in the record and very much in dispute. . . ." Jurisdictional Statement at 14 and 15. The Court of Appeals and Appellants both still question whether the Unification Church is a religious organization. 637 F.2d at 570 and Jurisdictional Statement at 23.

Some of the missing pieces of this litigation puzzle involve the legislative history of the Charitable Solicitations Act. Appellants note that legislative history had not been an issue in the case before the ruling of the Court of Appeals. Appellants state: "The district court had made no findings with respect to legislative purpose. No reference to the legislative history was cited by either plaintiffs or defendants in their briefs to the Circuit Court and the Circuit Court's opinion cites no legislative history supporting its conclusions." Jurisdictional Statement at 10-11. Appellants then describe the conclusions of the Court of Appeals as "unjust and incorrect. There is no support for the court's conclusions regarding legislative motivation in the legislative history." Jurisdictional Statement at 12.

Appellants then proceed to outline what they consider the legislative history of the amendments to the Charitable Solicitations Act. Jurisdictional Statement at 12-13. That history reveals: (1)The exemption provision was drafted *primarily* in response to the State of Maryland's investigation into the fundraising practices of a Roman Catholic group, the Pallottine Missions. Id. at 13. (2)"There was *almost* no discussion of the statute's effect on any organization even arguably 'disfavored. . . .'" *Ibid.* (Emphasis added.) (3)Dialogue in the Senate Judiciary Sub-Committee revealed "the amendment would allow the state to regulate those organizations soliciting in airports and in the streets." *Ibid.* (4)One House mem-

ber did raise the question of "regulation of airport solicitation." *Ibid.* And (5)A House committee referred to the Pallottine Missions. *Ibid.*

Thus Appellants' version[3] of legislative history reveals that at least parts of the amendments to the Charitable Solicitation Act *were* drafted with the goal of regulating certain religious organizations — perhaps the Pallottine Missions — and particularly those soliciting in airports and in the streets, which seem to be the favored fund-raising locations for certain highly publicized new religious movements, of which the Unification Church is a prime example.

Appellants' revelation of legislative history clearly supports the Court of Appeals' holding that the exemption provision of the Charitable Solicitation Act does not survive the first prong of the Establishment Clause test because the legislature sought to regulate religious organizations. 637 F.2d at 567.

(B) The Exemption Provision of the Charitable Solicitations Act violates the Establishment Clause because the Provision is not religiously neutral; one of its primary effects is to inhibit Appellees' religion.

This court wisely has adhered to the principle that under the Establishment Clause of the First Amendment government must remain neutral in matters of religion.

In *Everson* v. *Board of Education,* 330 U.S. 1, 15, 18 (1947), this Court held that government cannot "pass laws which . . . prefer one religion over another," that government must "be a neutral in its relations" with

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[3] Friends of this Court wonder what a full examination of legislative history by Appellants and Appellees would reveal. See Footnote 2, *supra* at 5.

religions, and that government "power is no more to be used so as to handicap religions than it is to favor them." *Also see Zorach* v. *Clauson*, 343 U.S. 306, 314 (1952), and *Epperson* v. *Arkansas*, 393 U.S. 97, 103-04 (1968). In *Roemer* v. *Maryland Board of Public Works*, 426 U.S. 736, 745-46 (1976), this Court said government is required to be scrupulously neutral as among religions.

But a primary effect of the Minnesota Charitable Solicitations Act is that the state has ceased to be scrupulously neutral. The law in effect says some churches that solicit funds from the public must open their financial records to the public, while other churches do not need to do so. The Court of Appeals, in the view of the Friends of this Court, rightly held that the exemption based on the percentage of funds publicly solicited was impermissible "religious gerrymandering." 637 F.2d at 566, quoting *Gillette* v. *United States*, 401 U.S. 437, 452 (1971). The court said that "a significant effect" of the exemption section would be to relieve certain religious organizations of registration and disclosure requirements, which that court said were "certainly not *de minimis.*" 637 F.2d at 568.

Appellants contend that under this court's decision in *Gillette*, Appellees in this case have the burden of demonstrating a religious gerrymander. Brief for Appellants at 19. The legislative history cited in Appellants' Jurisdictional Statement, as shown above, points out the primary legislative goal of regulating those religious organizations soliciting in public places. Focusing on those particular kinds of religious groups certainly is a religious gerrymander.

A second religious gerrymander contained in the Charitable Solicitation Act involves the registration and reporting exemptions, Minn. Stat. § 309.515(1)(b),

which were added in 1978. Previously all religious organizations were exempted from the Act's registration and reporting requirements. Jurisdictional Statement at 7. The 1978 amendment exempts *only* religious organizations receiving more than 50% of their contributions from parent or affiliated organizations and/or their members.

Appellants seek to justify the exemption on two grounds: (1) "[M]embers are reasonably assumed to have control over solicitation of contributions from themselves and expenditure of the funds they contribute" and (2) "members of organizations have greater access to financial information as a matter of Minnesota law," specifically the Minnesota Non-profit Corporation Act, Minn. Stat. § 317.28(1980). Appellants' Brief at 28.

The first justification, however, is not supported in Appellants' Brief by any case law or references to the Record. Apparently it is just "reasonably assumed." But that assumption, unsupported, may *not* be reasonable. Do members of religious groups determine what offerings will be solicited from individual members or congregations? The answer may be "Yes" for congregational churches. But what is the answer for hierarchical churches — or for churches with some other kind of polity? The Seventh-day Adventist Church, which describes its polity as representative, annually adopts a Calendar of Special Days and Offerings that local congregations generally follow. 1980 *Annual Council Actions* [of the North American Division of that Church] at 86-88. And what kind of control — if any — do members of many religious groups have over the expenditure of funds they contribute? Again, the Record in this case is bare of any evidence. *But see Wheeler* v. *Roman Catholic Archdiocese of Boston, Inc.*, 389 N.E.2d 966 (Mass.

1979), *cert. denied,* 100 S. Ct. 208 (1979), in which members of a hierarchical church unsuccessfully sought to impose a trust on land bought with funds contributed to develop a cemetery but in fact used to build low- and moderate-income housing. Friends of this Court suggest that it *cannot* be reasonably assumed that members of any particular religious organization have control over the solicitation and expenditure of funds, since some simply are not organized along democratic or representative lines.

The State's second justification — that members have greater access to financial information under Minnesota law — also is suspect because it is *not* supported by evidence showing that religious organizations in Minnesota are incorporated under the State's Non-profit Corporation Act. Are the Roman Catholic, Seventh-day Adventist, Presbyterian, Lutheran, United Methodist, and other denominations in Minnesota incorporated under the State's Non-profit Corporation Act? There is no evidence to answer this question. If the answer is "No," then members of those religions do *not* have access to denominational books and records, unless the respective churches by constitution, bylaw, or policy permit such access, as some, though not all, do.

If members of churches in Minnesota in general do *not* have access to their church's books and records, then, as Appellants put it, "the need for public disclosure is obvious" for those churches too. Appellants' Brief at 29. All should be treated equally. The State's interest in public disclosure should be the same for all such denominations, though Friends of this Court argue in the next subsection that application of the disclosure requirements in the Act to any church runs afoul of the excessive-

entanglement prong of the Establishment Clause of the First Amendment.

In any event, this religious gerrymander violates the Establishment Clause of the First Amendment.

(C) The Charitable Solicitations Act, as applied to Appellees, violates the Establishment Clause because it excessively entangles church and state.

The Court of Appeals did not examine the third prong, that of excessive church-state entanglement, of this Court's Establishment Clause test. 637 F.2d at 569. Friends of this Court nonetheless believe the Minnesota Charitable Solicitation Act, as applied to Appellees and other religious organizations, violates that third prong of the Establishment Clause, thus making the Act unconstitutional. In the context of its application to religious groups, the Act is literally riddled with excessive entanglements between church and state.

Here are thirteen excessive entanglements required or permitted by the Act:

(1) A church with its registration statement must file copies of contracts with professional fundraisers and "[s]uch other information as the department may by rule or order require to promote fairness . . . and to assure full and fair disclosure." Section 309.52(m) and (p), Jurisdictional Statement at A-77. In addition to excessively entangling church and state, these requirements give apparently unlimited discretion to departmental personnel to order production of Church documents. Such discretion this Court considered a violation of the Free Exercise Clause of the First Amendment in *Cantwell* v. *Connecticut,* 310 U.S. 296, 305-06 (1940). In *NAACP* v. *Button,* 371 U.S. 415, 432-33 (1963), this Court also warned that First Amendment freedoms are endangered

by overly vague and overly broad statutes susceptible of sweeping and improper application.

(2) The annual report must be filed "upon forms provided by the department or on forms identical thereto." Section 309.53(1), Jurisdictional Statement at A-79. This requirement may force religious groups to restructure themselves in order to provide data required by the State. This court in *Kedroff* v. *St. Nicholas Cathedral,* 344 U.S. 94, 116 (1952), indicated that religious organizations, in a "spirit of freedom" and "independence from secular control or manipulation," have the power under the First Amendment, "to decide for themselves, free from state interference, matters of church government." The Minnesota Charitable Solicitations Act goes a long way toward sapping that vital spirit of freedom and independence. In addition, the annual report as such would be a continuing church/state entanglement. This Court found "continuing state surveillance" a violation of the Establishment Clause in *Lemon* v. *Kurtzman, supra* at 619.

(3) The financial statement that must accompany the annual report must reveal "[t]otal receipts and total incomes from all sources." Section 309.53(3)(a), Jurisdictional Statement at A-80. This forces a church to reveal income from its members and from other levels of the church, information that should be beyond view of government in a democratic society, let alone one with a Constitution guaranteeing free exercise of religion and a wall of separation, however blurred, indistinct, and variable, between church and state. *Lemon* v. *Kurtzman, supra* at 614. In *Buckley* v. *Valeo,* 424 U.S. 1, 64 (1976), this Court noted that "compelled disclosure, in itself, can seriously infringe on privacy of association and belief guaranteed by the First Amendment." Later the Court said that "the invasion of privacy of belief may be as

great when the information sought concerns the giving and spending of money as when it concerns the joining of organizations." *Id.* at 66. Although this Court in *Buckley* indicated that governmental encroachments on First Amendment rights sometimes can be justified, it applied a "strict test" involving "exacting scrutiny." *Id.* at 64-65. The test requires more than a "mere showing of some legitimate governmental interest." *Id.* at 64. The Court said First Amendment rights might be encroached to preserve "'free functioning of our national institutions.'" *Id.* at 66. Friends of this Court suggest that the Minnesota Charitable Solicitations Act itself excessively encroaches on the free functioning of national institutions — in this case the churches of our land — that are themselves specifically protected by the Establishment and Free Exercise Clauses of the First Amendment from excessive government intervention. Friends of this Court in Argument III, below, suggest a solution that constitutionally satisfies the public interest raised by the State in this case. *Accord, Surinach* v. *Pesquera de Busquets,* 604 F.2d 73, 79 (1st Cir. 1979).

(4) The financial statement must reveal "[f]unds . . . transferred out of state, with explanation as to recipient and purpose." Section 309.53(3)(e), Jurisdictional Statement at A-80. Again, this information should be on the church's side of the wall of separation. It should not be any of the state's business, whether the funds be contributed by members or non-members, if a church treasurer transfers funds to higher church authorities to send missionaries to staff a clinic or school in some distant state or country.[4]

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[4] The Vatican, faced with a large deficit for 1981, is about to ask wealthy dioceses, including those in the United States, to increase their donations to Rome. *Vatican Expecting a $25.6-Million Deficit in 1981,* Los Angeles Times, July 16, 1981, at Part I, page 4. If Min-

(5) The financial statement must break down "amounts disbursed or dedicated for each major purpose, charitable or otherwise." Section 309.53(3)(f), Jurisdictional Statement at A-80. This subsection openly invites State authorities to define what is "religious" and what is not. This Court questioned such power in *Cantwell* v. *Connecticut, supra* at 305-06.

(6) The financial information must "set forth separately and not in consolidated form with respect to every chapter, branch, area office . . . within the state which raises or expends more that $10,000." Section 309.53(4), Jurisdictional Statement at A-81. Again, the wall of separation suggests that it is unconstitutional to require the opening of local church records, including information concerning member giving, to government authorities. The Act does permit submission of consolidated information "if the attorney general determines that the interests of the charitable beneficiaries will not be prejudiced." *Ibid.* But the Act apparently does not define "charitable beneficiaries." Who are they? Members or some group of members of the church soliciting the money? The general public or some special subdivision of the general public? If funds are raised for religious ministries, government of any level should not be competent to determine whether the "charitable beneficiaries" will or will not be prejudiced by consolidating financial reports.

(7) The department may deny an application, suspend or revoke any license or registration, or may censure a licensee or registrant if it finds "that the order is in the

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nesota's Roman Catholic churches were subject to the reporting requirements of the Charitable Solicitations Act, donations of those churches to the Vatican would have to be reported and would become public records.

public interest." Section 309.532, Jurisdictional Statement at A-83. Again, government should not be tempted with the arbitrary, perhaps even capricious, power of determining that certain religions (by way of their solicitation activities) are "in the public interest" and that others are not. In *Cantwell* v. *Connecticut, ibid.*, this *Court* ruled against such open-ended powers.

(8) The commissioner may promulgate rules and regulations specifying what actions and omissions constitute "fraudulent, deceptive or dishonest practices." Section 309:532(2), Jurisdictional Statement at A-83. Again, government should not be tempted with framing definitions that by religious gerrymander could make one religious solicitation acceptable but another "fraudulent, deceptive or dishonest." *Cantwell* v. *Connecticut, ibid.*

(9) The commissioner "in his discretion . . . may make public or private investigations as he deems necessary." Section 309.533, Jurisdictional Statement at A-84. In addition, the commissioner may promulgate rules "as are necessary," and the department may enter into reciprocal agreements to exchange information with other states. Sections 309.591 and 309.60, Jurisdictional Statement at A-95 and A-96. Again, the unlimited discretion given the commissioner is impermissible under this Court's decisions in *Cantwell* v. *Connecticut, ibid.*, and *NAACP* v. *Button, supra.* The state's unlimited power here to investigate churches may be good politically — if the churches investigated are unpopular ones — but clearly that power violates First Amendment concepts of government neutrality and easily could lead to political divisiveness along religious lines, a danger this Court warned of in *Lemon* v. *Kurtzman, supra.*

(10) The Commissioner or his designated representatives have, in effect, full investigatory power over any witnesses or "books, papers, correspondence, memoran-

da, agreements or other documents in records . . . [he] deems relevant or material." Section 309.533(2), Jurisdictional Statement at A-85. Apparently this would open *all* church books to government, if the state deemed them relevant or material, even if they involved relationships between a church and its individual members or materials protected by evidentiary privilege.

(11) All required records become public records open for public inspection. Section 309.54(1), and (2) Jurisdictional Statement at A-87. This means that financial statements of *all* income for non-exempt churches, including income from members, will be open for public examination. This may be contrary to the traditions and/or constitutions or bylaws of some denominations. And there would be no better way to lead to harrassment or persecution of new — or old — religious groups by dissidents or former members. This would be intolerable under the Establishment and Free Exercise Clauses of the First Amendment. *Surinach* v. *Pesquera de Busquets, supra* at 78.

(12) Expenditure of more than 50% of income is presumed to be "unreasonable," and even lesser percentages may be challenged by the state, which can deny or revoke registration. Excess expenditures "shall be recoverable from the charitable organization by the attorney general." This Court in *Village of Schaumburg* v. *Citizens for a Better Environment,* 444 U.S. 620, 100 S.Ct. 826, 835-36 (1980), indicated that in some instances it may be reasonable for an organization to spend more than 25% of its income for such purposes. And for an attorney general to seek to recover excess expenditures from a church raises unique church/state questions: Does he levy on tithes or offerings of members? Does he sell local churches? Does he order a special offering?

And if he secures money, what does he do with it? Put it in the state treasury? Give it to another denomination? This section of the Act is impossible to square in any sense with the "no excessive entanglement" prong of the Establishment Clause test. As this Court said in *Everson* v. *Board of Education, supra* at 16, "Neither a state nor the Federal Government can, openly or secretly, participate in the affairs of any religious organizations or groups and vice versa."

(13) "The attorney general may retain as consultants such accountants or other experts as the administration of this chapter may require." Section 309.582, Jurisdictional Statement at A-95. Perhaps no better way could be devised to enable persons intent on harassing religion or a religious group to be able to do so. Former members might volunteer to rummage through the financial records of the churches with which they previously were affiliated. This is potentially a gross violation of government neutrality in actions involving religion or competing religious interests. *Ibid.; Zorach* v. *Clauson, supra; Epperson* v. *Arkansas, supra; Roemer* v. *Maryland Board of Public Works, supra.*

The Charitable Solicitations Act thus clearly violates the excessive entanglement prong of the Establishment Clause test.

ARGUMENT II

The Court of Appeals in Its Discretion Properly Held That the Exemption Should Be Extended to All Religious Groups.

The Court of Appeals held "that all sects are entitled to claim the religious organization exemption." 637 F.2d at 570. This Court should affirm that holding because the opposite holding — denying the exemption to all religious groups — would leave all churches open to the

excessive government entanglement discussed in Argument I, *supra*. Also as discussed in Argument I, *supra*, the Act, if applied to all religious groups, fails the Establishment Clause test because it has a suspect purpose and its application to churches and their members would inhibit their free exercise of religion, which itself is guaranteed by the First Amendment.

This Court in a property-tax exemption case, *Walz* v. *Tax Commission of City of New York*, 397 U.S. 664, 674 (1970), held that *elimination* of an exemption for churches would tend to expand church-state involvement and to increase direct church-state confrontations and conflicts. Friends of this Court believe elimination of religious exemptions from the Minnesota Charitable Solicitations Act would increase needless church-state confrontations and conflicts.

ARGUMENT III

This Court Has Enunciated the Solution to This Problem: Registration of Solicitors and Application of Penal Laws.

The sensitive issues involving church/state relationships and the public interest involved in this case are not new ones. The names of religious groups may change. The wording of laws may be different. But this Court through the last forty-one years has given answers that are acceptable and proper today if this Court wishes to help conserve religious freedom and at the same time sufficiently satisfy the public interests the State of Minnesota seeks to protect by its Charitable Solicitations Act.

First, this Court has approved simple registration procedures for solicitors.[5] In *Cantwell* v. *Connecticut, supra* at

[5] Amicus General Conference of Seventh-day Adventists suggests its churches supply the following information when registering its Ingathering ministry with civil authorities: names, addresses, and telephone number of local church and local pastor and layperson and

306, this Court held: "Without a doubt a state may protect its citizens from fraudulent solicitation by requiring a stranger in the community, before permitting him publicly to solicit funds for any purpose, to establish his identity and his authority to act for the cause which he purports to represent."

Second, this Court has held that states may use criminal laws to prevent fraud. In *Cantwell, ibid.*, this Court said: "Nothing we have said is intended even remotely to imply that, under the cloak of religion, persons may, with impunity, commit fraud upon the public. Certainly penal laws are available to punish such conduct."

Thomas Jefferson, one of the Founders of this nation and a leader in the drafting and adoption of the First Amendment (*see Everson* v. *Board of Education, supra* at 13), wrote against government discretion in religious matters and indicated his belief that government should limit First Amendment freedoms only in extreme circumstances. In 1779 in a Bill for Establishing Religious Freedom, he said:

> The opinions of men are not the object of civil government. To suffer the civil magistrate to intrude his powers into the field of opinion and to restrain the profession or propagation of principles on supposition of their ill tendency is a dangerous fallacy, which at once destroys all religious liberty, because he being of course judge of that tendency will make his opinions the rule of judgment, and approve or condemn the sentiments of others only as they square with or differ from his own. It is time enough

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local-conference official supervising Ingathering; sample of literature to be distributed; rationale for Ingathering; sample of identification carried by volunteer solicitors; and dates, and, where necessary, hours of the door-to-door-evangelism. 1975 *Annual Council Actions* [of the North American Division on that Church] at 33-34.

> for the rightful purposes of civil government for its officers to interfere when principles break out into overt acts against peace and good order.

Quoted in Forman, *The Life and Writings of Thomas Jefferson* 232 (1900).

Thus two concepts should embody the limits on government control of religious solicitations. A state should be permitted to require religious solicitors to register, such registration to be limited to basic identification facts and the individual's authority to solicit for his particular cause. If a state is concerned about fraud disguised as religion, this Court should require that state to resort to its criminal laws with their high requirements of proof. In any event, any disclosure requirement should be limited to funds publicly solicited and not include those contributed by members or affiliated church groups.

SUMMARY OF ARGUMENT

This Court should rule that the Charitable Solicitations Act of the State of Minnesota is unconstitutional because it violates the Establishment Clause of the First Amendment to the Constitution of the United States. The Act fails all three parts of the Establishment Clause test used by this Court. It seeks to regulate religious organizations; a primary effect is to inhibit the free exercise of religion; and it excessively entangles the state in church affairs. All churches should be exempted from the Act's coverage. This Court should conserve the First Amendment right to free exercise of religion by limiting state control of religious solicitations to registration of solicitors and to use of penal laws against those who commit fraud upon the public.

CONCLUSION

Friends of this Court — the General Conference of Seventh-day Adventists, the National Council of Churches, and the Baptist Joint Committee on Public Affairs — respectfully request this Court, for the reasons stated in this brief, to affirm the judgment of the Court of Appeals.

Respectfully submitted,

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1980

No. 80-1666

JOHN R. LARSON, et al.,

Appellants,

vs.

PAMELA VALENTE, et al.,

Appellees.

On Appeal
From the United States Court of Appeals
for the Eighth Circuit

BRIEF OF THE GREATER MINNEAPOLIS ASSOCIATION OF EVANGELICALS, AS AMICUS CURIAE IN SUPPORT OF AFFIRMANCE

INTEREST OF AMICUS CURIAE[1]

Amicus Curiae is a non-profit tax-exempt corporation established in 1970 to provide and promote fellowsh'p among individual Christians, churches and other Christian

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[1]The letters of consent of the parties to the filing of this brief have been filed with the Clerk pursuant to Rule 36.1.

organizations in the City of Minneapolis and its neighboring area; to provide a vehicle for voluntary united action among all evangelical churches in the area; and to promote the work, interests and all phases of the program of the National Association of Evangelicals with which it is affiliated. Members of the Amicus Curiae are churches, organizations or individuals who reside in the area and who either are members of the National Association of Evangelicals or who subscribe to the doctrinal statement of N.A.E.[2] It's work is managed by a Board of Directors of twenty persons.

Amicus Curiae sponsors Christian fellowship activities and Bible study groups of voluntary associations of Christian peace officers, teachers, clergy and singles groups. It sponsors tour groups; promotes and subsidizes a half-way house and vocational training for persons recently released from prison. Amicus Curiae maintains a regular counseling service for troubled persons. It owns group homes for dependent or neglected girls who need social, mental, physical, emotional and spiritual attention.

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[2]The doctrinal statement of faith of the National Association of Evangelicals is:

(1) We believe the Bible to be the inspired, the only infallible, authoritative Word of God. (2) We believe that there is one God, eternally existent in three persons: Father, Son and Holy Spirit. (3) We believe in the deity of our Lord Jesus Christ, in His virgin birth, in His sinless life, in His miracles, in His vicarious and atoning death through His shed blood, in His bodily resurrection, in His ascension to the right hand of the Father, and in His personal return in power and glory. (4) We believe that for the salvation of lost and sinful man, regeneration by the Holy Spirit is absolutely essential. (5) We believe in the present ministry of the Holy Spirit by whose indwelling the Christian is enabled to live a godly life. (6) We believe in the resurrection of both the saved and the lost; they that are saved unto the resurrection of life and they that are lost unto the resurrection of damnation. (7) We believe in the spiritual unity of believers in our Lord Jesus Christ.

Its ministry includes adoption services, crisis pregnancy counseling and supportive service and chaplaincy services to public agencies. It sponsors a variety of meetings and seminars on religious topics of interest to its members and the public at large.

Among its employees Amicus Curiae maintains a full-time director of development whose duties include fund-raising and solicitation for its various ministries. Some of its ministries are operated through separate non-profit corporations with their own Board of Directors. The membership of these ministries is limited to the Board of Directors of such ministry. Each ministry attempts to develop its own source of funding and its own constituency to the fullest extent possible and to rely on the parent Amicus Curiae only as may be absolutely necessary. Amicus Curiae and its affiliated ministries use a variety of methods of communication and fund raising appeals. These include banquets to which interested persons are invited, radio programs, direct mail appeals, rummage sales and personal solicitations. A group of members and supporters meet regularly to pray for the needs of the various ministries. *Fund raising is an integral and inseparable part of its religious witness and ministry.*

Some of the member churches or organizations of the Amicus Curiae are operated and controlled by a Board of Directors or Boards of Trustees who are the sole members of the organization and who contribute less than fifty percent of the funds necessary to maintain their ministry. Other individual members of Amicus Curiae attend local evangelical churches whose membership consists solely of the Board of deacons, Board of elders or directors of the

church. Again, these formal members contribute less than fifty percent of the funds necessary to maintain their church and its ministry. Thus, some of the activities of the Amicus Curiae, its affiliated ministries, as well as those of its members or supporters, are or are likely to be subject to the charitable solicitation act, if it is upheld.[3]

The legal position taken by Amicus Curiae in support of Appellees in the issues before this Court in no way should be construed to be in doctrinal agreement with the religious beliefs and practices of the Appellees and, indeed, many of their beliefs and practices are specifically disavowed by this Amicus Curiae. The interest of this Amicus Curiae arises out of a concern for the preservation of religious liberty, freedom of speech and freedom of association and a desire to provide the Court with an analysis of the various legal aspects of this case which have not been adequately addressed.

SUMMARY OF ARGUMENT

The statute at issue should be held unconstitutional because it is unconstitutionally vague, overbroad and burdensome to the fundamental liberties of freedom of speech, freedom of religion and freedom of association. Its provisions of registration, inspection and control violate the Establishment Clause of the First Amendment to the Federal Constitution because there is excessive entanglement between church and state. The statute further violates the Establishment Clause because it violates the

[3]It is difficult to know for certain whether an organization is subject to the act because of vagueness of its terms and also because no regulations have been adopted to attempt to specifically and clearly explain what is intended.

principle of governmental neutrality between religious groups as there is no equal treatment of the individual rights of conscience. The statute intrudes on fundamental rights of individuals and groups and violates the Equal Protection Clause of the Fourteenth Amendment to the Federal Constitution as the legislative purpose does not meet the compelling state interest test and there are lesser restrictive alternates available. Finally, the statute evidences a claim of the state to pervasively control churches, religious groups and other voluntary associations without authority to do so in violation of the Minnesota State Constitution.

ARGUMENT

A. THE REGISTRATION, INSPECTION AND CONTROL PROVISIONS OF THE STATUTE ARE UNCONSTITUTIONALLY VAGUE, OVERBROAD AND BURDENSOME TO FREEDOM OF SPEECH, FREEDOM OF RELIGION AND FREEDOM OF ASSOCIATION.

This Court has consistently struck down as unconstitutional statutes or ordinances similar to the one at issue, that are vague and excessively burdensome to fundamental rights and liberties. In *Lovell v. Griffin*, 303 U.S. 444 (1938), ordinances were struck down on First Amendment grounds where the issuance of a permit to solicit or pass out handbills was discretionary with a government official. The possibility of fraud was not a sufficient ground to validate the ordinance. In *Cantwell v. Connecticut*, 310 U.S. 296 (1940), the Court again set aside a conviction under a statute forbidding solicitation of con-

tributions and held that the discretionary determination by a public official as to what is a religious cause was considered to be an invalid prior restraint on the free exercise of religion. In the statute in question the discretion of the state official is set forth in the words "public interest", "fair" or "material." In *Jamison v. Texas,* 318 U.S. 413 (1943), the Court held that distribution of handbills which might seek in a lawful fashion to promote the raising of funds for religious purposes could not be prohibited. This was confirmed in *Murdock v. Pennsylvania,* 319 U.S. 105 (1943). In *Thomas v. Collins,* 323 U.S. 516 (1945), it was held that the First Amendment barred enforcement of a state statute requiring a permit before soliciting membership in any labor organization. The Court ruled that solicitation and speech were so intertwined that a prior permit could not be required. *Hynes v. Mayor of Oradell,* 425 U.S. 610 (1976), invalidated a city ordinance requiring an identification permit for canvassing or political purposes as the wording of the ordinance was "unacceptably vague." And very recently in *Schaumburg v. Citizens for a Better Environment,* 444 U.S. 620 (1980), this Court struck down an ordinance which assumed that any organization which spent more than 25% of their receipts on salaries and administrative expenses was fraudulent. The Court recognized that this was an undue burden on First Amendment liberty where the organization used the same persons to perform research, advocacy or public education functions as well as solicitations.

The statute is also over-broad. For example, its definition of the term "solicit" or "solicitation" does not

meet necessary requirements of a narrowly drawn regulation. *Schaumburg v. Citizens for a Better Environment*, 444 U.S. 620 (1980); *NAACP v. Button*, 371 U.S. 415, 438 (1963). The terms solicit or solicitation are defined at Section 309.50 Subdivision 10—

Subd. 10. "Solicit" and "solicitation" mean the request directly or indirectly for any contribution, regardless of which party initiates communication, on the plea or representation that such contribution will or may be used for any charitable purpose, and include any of the following methods of securing contributions:

(1) Oral or written request;

(2) The distribution, circulation, mailing, posting, or publishing of any handbill, written advertisement, or publication;

(3) The making of any announcement to the press, over the radio, by television, by telephone, or telegraph concerning an appeal, assemblage, athletic or sports event, bazaar, benefit, campaign, contest, dance, drive, entertainment, exhibition, exposition, party, performance, picnic, sale, or social gathering, which the public is requested to patronize or to which the public is requested to make a contribution;

(4) The sale of, offer, or attempt to sell, any advertisement, advertising space, book, card, magazine, merchandise, subscription, ticket of admission, or any other thing, or the use of the name of any charitable person in any offer or sale as an inducement or reason for purchasing any such item, or the making of any statement in connection with any such sale, that the whole or any part

of the proceeds from any such sale, that the whole or any part of the proceeds from any such sale will be used for any charitable purpose. A "solicitation" shall be deemed completed when made, whether or not the person making the same receives any contribution or makes any such sale.

It would be hard to imagine a more broadly drawn definition and seems clearly intended to have that effect. It would constitute a substantial burden on fundamental liberties of speech, religion and association It is not limited as to time place and manner which is required by a number of decisions of this Court if restrictions are placed on fundamental liberties. *Grayned v. County of Rockford*, 408 U.S. 104 (1972); *Kovacs v. Cooper*, 336 U.S. 77 (1949); *Cox v. New Hampshire*, 312 U.S. 569 (1941); *Heffron v. International Society for Krishna Consciousness*, 49 U.S. L.W. 4762 (1981). The statute fails to pass any of the basic constitutional tests.

B. THE REGISTRATION, INSPECTION AND CONTROL PROVISIONS OF THE STATUTE VIOLATE THE ESTABLISHMENT CLAUSE OF THE FIRST AMENDMENT BECAUSE THERE IS AN EXCESSIVE ENTANGLEMENT BETWEEN CHURCH AND STATE.

In order to determine whether legislation violates the Establishment Clause the Court has developed a three-pronged test. First, the statute must have a secular legislative purpose; second, its principal or primary effect must neither advance nor inhibit religion and third, the statute must not create "entanglement" between government and religion by "on-going and intrusive administra-

tive relationships or creation of 'political divisiveness'." *Lemon v. Kurtzman*, 403 U.S. 602, 612 (1971).

Section 309.52, subd 1 of the statute precludes any charitable organization, including non-exempt churches, from soliciting contributions unless *prior thereto* (emphasis added) it files a registration statement containing certain specified information together with "such other information as the department may by rule or order require to promote *fairness* of the solicitation and to assure full and fair disclosure of *all material information* to the department." (309.52 subd. 1, (p)) Under the provisions of subd. 1 (p) above the state authorities have nearly complete and unfettered discretion. They can require any information which promotes "fairness of solicitation" and assures "full and fair disclosure of all material information". These over-broad terms allow a blanket authority to the state authorities to determine what must be required as "fair" or "material". This gives rise to insufficiency of due process to those who are required to comply with its provisions. In addition, the possibilities for excessive entanglement between the applicant and state authorities are thus almost endless. The state authorities are free to inquire about almost anything they want subject only to a vague "fairness" or "material to a full and fair disclosure" standard.

In addition, Section 309.543, subd. 1, authorizes the state to suspend or revoke any registration if it finds that such action is in the *public interest* and that the registrant:

> "(a) has filed an application for a license or registration which is *incomplete* in any *material respect* or contains any statement which, in light of the cir-

circumstances under which it is made, is *false or misleading* with respect to any material fact;

(b) has engaged in a *fraudulent, deceptive or dishonest practice;*

(c) is permanently or temporarily enjoined by any court of competent jurisdiction from engaging in or continuing any conduct or practice involving any aspect of charitable solicitations; or

(d) has violated or failed to comply with any provision of this chapter or any rule or order under this chapter." (emphasis added)

Again, the statute uses over-broad designations of "public-interest"[*] to suspend or revoke charitable registrations. This gives a public official very broad discretion to determine what the state official believes to be in the public interest. Of necessity, the definition of "public interest" as determined by the public official will be compared with the religious beliefs and practices of an organization. This would not only be done initially but the state is authorized to do so on an on-going basis. This creates a number of problems. First, there is the necessity for the state to learn in some detail the beliefs and practices of the organization. This would require review of its structure, basis of belief and scrutiny of its practices. The "public interest" test looks suspiciously like a "religious test" which has been specifically prohibited by this

[*]The "public interest" test violates one of the basic principles of a free society. "If there is any fixed star in our constitutional constellation, it is that no official . . . can prescribe what shall be orthodox in politics, nationalism, religion or other matters of opinion . .", Justice Jackson, *West Virginia State Board of Education v. Barnette,* 319 U.S. 624, 642 (1943).

Court. *Cantwell v. Connecticut*, 310 U.S. 296 (1940). Also, the word "public interest" is very vague. What is the public interest? Political bodies debate it every day. The newspapers are full of discussion about what is or is not in the public interest. An organization (whether religious or not) would never know for sure where it stood on this point.

The charitable registration can also be suspended or revoked if one engages in a fraudulent, deceptive or dishonest practice. (Section 309.532 Subd. 1, (b)). What is a fraudulent, deceptive or dishonest practice? Again this is vague and over-broad and without definite and certain standards. In the case of religious organizations another problem arises with this type of language. There is considerable danger that the state would (if it relied on this language) attempt to inquire into the truth or falsity of the religious beliefs of an organization. This the state cannot do. As this Court stated in *United States v. Ballard*, 322 U.S. 78, 86 (1944):

> Heresy trials are foreign to our Constitution. Men may believe what they cannot prove. They may not be put to the proof of their religious doctrines or beliefs.

Section 309.515, subd. 1 of the statute exempts those charitable organizations that did not receive contributions in excess of $10,000 in the preceeding year, and those religious organizations which received in the preceeding year more than half of their contributions from: (1) persons who are *members of the religious organization* or (2) from a parent or affiliated organization; or (3) from a combination of the sources listed in (1) and

(2). (emphasis added). The term "member" excludes those who are granted membership upon making a contribution as a result of a solicitation. Whether one is a "member" of a religious organization is not always readily ascertainable. For example, is a person a de facto "member" who is on a mailing list of an organization and who periodically receives a newsletter of the organization and has contributed to the organization at some time in the past and shares basically the same religious beliefs? Or consider the situation of a church whose formal membership structure is limited to a Board of deacons or elders. If a person regularly attends the worship service and a Bible study or prayer group once a week, is he a member of the organization? If not, does he become a member if he pledges money to the religious organization? One can see at least two factors, inter alia, that emerge from these two examples:

> (1) The state whether by legislative enactment, regulation or judicial interpretation will end up defining who are the members of a religious organization;
>
> (2) The state in order to determine who are members and who are not, must excessively involve itself with the religious organization; not only initially but on an ongoing basis, to find out the nature and extent of their involvement, how much information about the operation has been furnished, whether it has been fair, etc.

This is not the type of activity by public officials that is permitted under our Constitution and public officials cannot be empowered to act in any such capacity.

In summary, the statute attempts to *quantify* what is only subject to *quality* tests (which are beyond the purview of the state). One cannot give a number or an efficiency rating to matters such as truth or falsity or good or evil or faith or trust or anything transcendent. *Small is Beautiful; Economics as if People Mattered,* E.F. Schumacher (1973) pages 45-46. The statute attempts to reduce religious beliefs and practices solely to the material and the state transgresses its authority by attempting to judge such values by the fallible human mind of a state official. Religious groups are not subject to recall by the state like defective automobiles in need of repair. The principles of "consumerism" cannot be applied to what is transcendent. This is the ultimate and fundamental error.[5]

C. THE STATUTE VIOLATES THE ESTABLISHMENT CLAUSE OF THE FIRST AMENDMENT BECAUSE THE GOVERNMENT IS NOT NEUTRAL BETWEEN RELIGIOUS GROUPS.

This Court has consistently held that the governnment must be neutral in dealing with religious matters. *Walz v. Tax Commission,* 397 U.S. 664, 669 (1970); *Abington*

[5]Justice Jackson understood this principle very well. In *Ballard* he said: "The chief wrong which false prophets do to their following is not financial. The collections aggregate a tempting total, but individual payments are not ruinous. . . . But the chief harm is on the mental and spiritual plane. There are those who hunger and thirst after values which they feel wanting in their humdrum lives. They live in mental confusion or moral anarchy and seek vaguely for truth and beauty and moral support. When they are deluded and then disillusioned, cynicism and confusion follow. The wrong of these things . . . is not in the money the victims part with half so much as in the mental and spiritual poison they get. But that is precisely the thing the Constitution put beyond the reach of the prosecutor, for the price of freedom of religion or of speech or of the press is that we must put up with, and even pay for, a good deal of rubbish. *United States v. Ballard,* 322 U.S. 78, 94-95 (1943).

School District v. Schempp, 374 U.S. 203 (1963); *Sherbert v. Verner,* 374 U.S. 398 (1963). As legal philosopher Edmond Cahn once said: "In America, Madison submitted most astutely, the rights of conscience must be kept not only free but *equal* as well." Cahn, *Confronting Injustice* 186-187 (1967). See also Madison. Memorial and Remonstrance against Religious Assessments 2, The Writings of James Madison 183-91 (G.Hunt ed 1901) reprinted in *Walz* supra at pp. 719-727. Yet, on the face of the statute there is discrimination among individual religious persons and groups based on how their membership is structured or based upon their particular method of obtaining funds to carry out their religious mission. There is no equal treatment of individual rights of conscience. This violates the Establishment Clause of the First Amendment.

D. THERE HAS BEEN A DENIAL OF EQUAL PROTECTION OF THE LAW BECAUSE THE STATUTE INTRUDES UPON A FUNDAMENTAL RIGHT IN VIOTION OF THE FOURTEENTH AMENDMENT AND IT IS THEREFORE APPROPRIATE TO APPLY STRICT EQUAL PROTECTION ANALYSIS.

The Court has established two distinct standards for determining whether a statute or rule violates the Equal Protection Clause. In cases involving routine social or economic regulations, a classification is deemed valid unless it is purely arbitrary or "wholly irrelevant to the achievement of the State's objectives." *McGowan v. Maryland,* 366 U.S. 420, 425 (1961); *United States Department of Agriculture v. Moreno,* 413 U.S. 528, 533

(1973). On the other hand, when the classification at issue is inherently "suspect" or when it affects "fundamental rights", the Court has applied a much stricter standard. In such cases, the Court has held that the classification, to be valid, must "promote a *compelling* governmental interest," *Shapiro v. Thompson*, 394 U.S. 618, 634 (1969) (emphasis in original), or serve some "overriding" purpose. *McLaughlin v. Florida*, 379 U.S. 184, 192 (1964). See also *Skinner v. Oklahoma*, 316 U.S. 535, 541 (1942) ("strict scrutiny" of sterilization law required); *Levy v. Louisiana*, 391 U.S. 68, 71 (1968) (Court is "extremely sensitive" to classifications which affect "basic civil rights"); *Graham v. Richardson*, 403 U.S. 365, 372 (1971) ("heightened judicial solicitude" is required for certain classes of persons); Note, "Developments in the Law—Equal Protection", 82 *Harv. L. Rev.* 1065, 1076-1132 (1969).

Amicus curiae submits that the stricter standard of equal protection analysis is applicable in this case. The classification at issue here affects a "fundamental right", namely, the constitutional right of persons and groups to freely exercise their religion. The activity of some is being classified differently from others' activities solely because of their method of exercise of religious obligations and it is appropriate to apply the type of strict equal protection scrutiny that was set out by the Court in *Reed v. Reed*, 404 U.S. 71, 75-76 (1971) and *Craig v. Boren*, 429 U.S. 190, 197 (1976) (the classification "must serve important governmental objectives and must be substantially related to the achievement of those objectives").

Freedom of religion is a fundamental personal right.

Jones v. Opelika, 316 U.S. 584, (1942) It holds a preferred position. *Follett v. McCormick*, 321 U.S. 573 (1944); *Murdock v. Pennsylvania*, 319 U.S. 105 (1943). The preferred position of freedom of religion is maintained as against the constitutional rights of owners of property. *Marsh v. Alabama*, 326 U.S. 501 (1945). In the instance of the state statute in question the purpose is to protect the public from possible fraud. This has been held to be a legitimate state interest but not a "compelling state interest." Strict scrutiny also reveals that there are lesser restrictive means[6] to accomplish the ends desired by the state. Therefore, the statute must be struck down. *Rowan v. Post Office Dept.*, 397 U.S. 728 (1970); *Martin v. Struthers*, 319 U.S. 141, 148 (1943); *Schneider v. State*, 308 U.S. 147, 164 (1939); *Schaumburg v. Citizens for Better Environment*, 444 U.S. 620, 639 (1980).[7]

E. THE STATE CLAIMS A PLENARY POWER AND AUTHORITY TO PERVASIVELY CONTROL CHURCHES AND RELIGIOUS GROUPS BUT IT HAS NO RIGHT OR POWER TO DO SO.

The Minnesota State Constitution contains a Freedom

[6]One "lesser restrictive means" is, of course, voluntary disclosure of finances to supporters of an organization. Many organizations routinely do this. Also, in recent years a number of evangelical organizations formed the Evangelical Council on Financial Accountability, in an attempt to establish accounting standards and issue a seal of approval to those member organizations who comply with its standards. According to officials of the Council some 180 evangelical organizations were members in compliance with its standards as of June 30, 1981. See *Christianity Today*, October 5, 1979, pp. 57-58.

[7]Governmental regulations which interfere with the exercise of specific religious beliefs or principles should be scrutinized with particular care. *Sherbert v. Verner*, 374 U.S. 398, 402-403 (1963). These are areas of conduct which are beyond the power of the state to control even under regulations of general applicability. *Wisconsin v. Yoder*, 406 U.S. 205, 220 (1972).

of Conscience provision in its Bill of Rights (Art. 1, Section 16) which includes two important statements:

> "The enumeration of rights in this Constitution shall not deny or impair others retained by and inherent in the people."
>
> "nor shall any control of or interference with the rights of conscience be permitted, *or any preference be given by law to any religious establishment* or mode of worship. . ." (emphasis added)[8]

The amendments to the statute regulating charitable solicitations of some religious groups and not others is a clear example of the state attempting to establish a "preference by law" to certain religious establishments. On the face of the statute there is unequal treatment of religious persons and groups. It applies to some groups but not to others. The state lacks authority under its own Constitution to pass the amendments urged upon us. Attempts to control or interfere with the rights of conscience are barred by this provision.

The freedom of conscience article also makes it clear that rights of conscience are vested in the people—individually or collectively. The freedom of conscience provisions stand as a bulwark against intrusion by the state except in limited instances where the peace or safety of the state is threatened or used to attempt to excuse acts

[8]Rights of conscience provisions are not necessarily limited to churches or other "religious" individuals or groups. Many persons will involve themselves in certain other voluntary associations out of reasons of conscience including organizations assisting the poor, feeding the hungry or protecting the right to life and various others. Indeed, one should consider *any* charitable act, whether individual or collective, to arise out of the moral imperative of conscience as it represents something that *ought* to be done and is simply the *right* thing to do.

of licentiousness (Article 1, Section 16), none of which are claimed to be applicable here.

Where does this claim of the state to regulate and control religious activities come from? A quote from Walter Berns book entitled *The First Amendment and the Future of American Democracy* provides some guidance:

> "The modern tyrant does not encourage passivity among his subjects. On the contrary, they are expected to be public-spirited: to work for the State, to exceed production schedules, to be citizen soldiers in the huge armies, and to love Big Brother...The modern tyrant parades as a political philosopher, the heir of Nietzsche or Marx, with a historical mission to perform. He cannot leave his subjects alone." Footnote at page 220

The state increasingly is becoming the "modern tyrant" who cannot leave the people alone.* Even ones religious beliefs and practices must be subject to "public interest" tests; justice is determined by the state's standard of "fairness", the state measures the quality of each group's stewardship, the state licenses and inspects books and records and requires conformance to state standards; and whether one is even a member of a religious institution may be defined by the state. The statute in issue is a good example of reducing law to no more than a mechanistic tool. Rules and regulations condition the mind and control conduct in place of higher values.

Law even attempts to control religious activity and re-

*The April 10, 1978 issue of Time magazine reported that "legislative bodies of every size across America have been spewing forth laws at a prodigious rate, more than 100,000 in some years. . . Federal agencies are generating an additional 35,000 or more new regulations every year. pg. 56.

ligious institutions. Those deedmed "fit" are included in the society—those deemed "unfit" are excluded or seriously hampered. The basis of truth in the guise of "public policy" becomes the "new religion." The state begins to make a claim of supremacy over all of life—a new oppressor is arising in the process. It is ironic that the very structure that has been created to insure our freedoms now turns on its own citizens and begins to demand an ultimate allegiance to it. Jacques Ellul, the French theologian and professor of law notes in his book, *The Ethics of Freedom* (1976)

> "The oppressor is the one who turns dialogue into constraint, commandment into dead law, the state into a dictatorship, ideas into ideologies, beliefs into dogmas, and economic organizations into mechanisms of exploitation. All this is but the fruit of the oppressor who imitates God but turns his work upside down." p. 437.

That is precisely the danger with the statute which the State of Minnesota urges upon us. They require conformance by its individual citizens and various voluntary associations to a course of conduct almost completely determined by the state—the state increasingly becomes a dictator.

But the very essence of protection of the rights of conscience is that one is free to have ultimate allegiance to a higher Authority than the state.[10] That is one reason why

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[10]The incidents of Daniel in the Lion's den and the three men in the fiery furnace found in Chapters 3 and 6 of the Book of Daniel are reminders that only God is sovereign; the Apostile Paul in Romans 12:2 also admonishes Christians—"Do not be conformed to this world but be transformed by the renewal of your mind that you may prove what is the will of God, what is good and acceptable and perfect." The Holy Bible, Revised Standard Version.

the right of conscience are a cornerstone of a free society. We are not required to "get in step" with the state.

Perhaps we need to be reminded once again of the origins of rights and especially the right of religious liberty. The Preamble to the Minnesota State Constitution guides us to the source. Originally enacted in 1857 (and re-enacted in 1974) it states: "We, the people of the State of Minnesota, grateful to God for our civil and religious liberty, and desiring to perpetuate its blessings and secure the same to ourselves and our posterity, do ordain and establish this Constitution." The State Constitution makes it clear that civil and religious liberty and its blessings comes from God—not the state. Civil and religious liberty is not an act of grace from the state—its source lies elsewhere. It comes as an "endowment from our Creator"—from God. It is a gift to each person as a creature of the Creator. The state is not free to parcel out freedom and liberty to whoever it chooses because the source of liberty is not derived from the state. The state has exceeded its authority.

CONCLUSION

Accordingly, this Court should affirm the order of the Court of Appeals for the Eight Circuit which enjoined the enforcement of this statute and further determine that this statute is unconstitutional.

Respectfully submitted,

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Dated: September 14, 1981.

CERTIFICATE OF SERVICE

State of Minnesota

ss.:

County of Hennepin

BE IT REMEMBERED, on this 14th day of September A.D. 1981, before me, the Subscriber, a Notary Public for the State and County aforesaid, personally appeared, Thomas W. Strahan, who being duly sworn according to law, did depose and say that he mailed today, by First-Class postage pre-paid mail, three copies of the within Brief of the Greater Minneapolis Association of Evangelicals as Amicus Curiae in Support of Affirmance to the following attorneys:

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Thomas W. Strahan

SWORN TO AND SUBSCRIBED before me the day and year aforesaid.

Notary Public